

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

HONORABLE GEORGE CARAM STEEH

v.

No. 15-20652

D-3 EUGENE FISHER,
D-4 COREY BAILEY,
D-6 ROBERT BROWN,
D-13 ARLANDIS SHY,
D-19 KEITHON PORTER,

Defendants.

JURY TRIAL

Thursday, August 16, 2018

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APPEARANCES:

For the Government:

JULIE FINOCCHIARO, ESQ.
JUSTIN WECHSLER, ESQ.
TARE WIGOD, ESQ.
MARK BILKOVIC, ESQ.
Assistant U.S. Attorneys

For the Defendants:

HENRY M. SCHARG, ESQ.
On behalf of Eugene Fisher

CRAIG DALY, ESQ.
KEITH SPIELFOGEL, ESQ.
On behalf of Corey Bailey

JAMES FEINBERG, ESQ.
On behalf of Robert Brown

MARK MAGIDSON, ESQ.
JOHN THEIS, ESQ.
On behalf of Arlandis Shy

STEVEN SCHARG, ESQ.
On behalf of Keithon Porter

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To Obtain Certified Transcript, Contact:
Ronald A. DiBartolomeo, Official Court Reporter
Theodore Levin United States Courthouse
231 West Lafayette Boulevard, Room 1067
Detroit, Michigan 48226
(313) 962-1234

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

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E X H B I T S

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N O N E

Detroit, Michigan

Thursday, August 16, 2018

At 8:58 a.m.

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(Proceedings held with jury.)

THE COURT: All right, folks. You can take
your seats.

Good morning, everyone.

ALL JURORS: Good morning.

THE COURT: Okay. So members of the jury,
now is time for me to instruct you about the law that you
must follow in deciding this case.

I will start by explaining your duties and the
general rules that apply in every criminal case. Then I
will explain the elements or parts of the crimes that the
defendants are accused of committing, and I will explain
then some rules to you that you must use in evaluating
particular testimony and evidence, and last I will explain
the rules that you must follow during your deliberations
in the jury room, and the possible verdicts that you may
return.

Please listen very carefully to everything that I
say.

You have to main duties as jurors. The first is

1 to decide what the facts are from the evidence that you
2 saw and heard here in court. Deciding what facts are is
3 your job, not mine, and nothing I have said or done during
4 the trial was meant to influence your decision about the
5 facts in any way.

6 Your second duty is to take the law that I give to
7 you, apply it to the facts, and decide if the government
8 has proved a defendant guilty beyond a reasonable doubt.

9 It is my job to instruct you about the law, and
10 you are bound by the oath that you took at the beginning
11 of the trial to follow -- I lost my spot -- you're bound
12 by the that you took at the beginning of the trial to
13 follow the instructions that I give you, even if you may
14 personally disagree with them. This include the
15 instructions that I gave you before and during the trial
16 and these instructions.

17 All of the instructions are important, and you
18 should consider them together as a whole.

19 The lawyers may have talked about the law during
20 the trial, and may talk about the law during their
21 arguments, but if what they say is different from what I
22 say, you must follow what I say. What I say about the law
23 controls.

24 Perform these duties fairly. Don't let any bias,
25 sympathy or prejudice that you may feel towards one side

1 or the other influence your decision in any way.

2 As you know, each defendant has pleaded not guilty
3 to the crimes charged in the superseding indictment, which
4 I will refer to here and after as the indictment. The
5 indictment is not any evidence at all of guilt. It's just
6 a formal way that the government tells a defendant what
7 crimes or crime he is accused of committing. It does not
8 even raise any suspicion of guilt.

9 Instead, each defendant starts the trial with a
10 clean slate with no evidence against him, and the law
11 presumes that he is innocent. This presumption of
12 innocence stays with him unless the government presents
13 evidence here in court that overcomes the presumption, and
14 convinces you beyond a reasonable doubt that a particular
15 defendant is guilty.

16 This means that a defendant has no obligation to
17 present any evidence at all, or to prove to you in any way
18 that he is innocent. It is up to the government to prove
19 that a defendant is guilty, and this burden stays on the
20 government from start to finish. You must find a
21 defendant not guilty unless the government convinces you
22 beyond a reasonable doubt that that person is guilty.

23 The government must prove every element of the
24 crime charged beyond a reasonable doubt. Proof beyond a
25 reasonable doubt does not mean proof beyond all possible

1 doubt. Possible doubts or doubts that are based purely on
2 speculation are not reasonable doubts.

3 A reasonable doubt is a doubt based on reason and
4 common sense. It may arise from the evidence, from the
5 lack of evidence or from the nature of the evident. Proof
6 beyond a reasonable doubt means proof that is so
7 convincing, that you would not hesitate to rely and act on
8 it in making the most important decisions in your on
9 lives.

10 If you are convinced that the government has
11 proved a particular defendant guilty beyond a reasonable
12 doubt, say so by returning a guilty verdict. If you are
13 not convinced, say so by returning a not guilty verdict.

14 You must make your decision based only on the
15 evidence that you saw and heard here in court. Don't let
16 rumors, suspicions, or anything that you may have seen or
17 heard outside the court influence your decision in any
18 way.

19 The evidence in this case includes only what the
20 witnesses said while they were testifying under oath, the
21 exhibits that were allowed into evidence, the
22 stipulations -- and the stipulations that the lawyers
23 agreed to.

24 Nothing else is evidence. The lawyers' statements
25 and arguments are not evidence. Their questions and

1 objections are not evidence. My legal rulings are not
2 evidence, and my comments and questions are not evidence.

3 During the trial if -- During the trial I did not
4 let you hear the answers to some of the questions that
5 lawyers asked. I also ruled that you could not see some
6 of the exhibits that the lawyers wanted you to see, and
7 sometimes I ordered you to disregard things that saw or
8 heard, or that I struck things from the record.

9 You must completely ignore all of these things.
10 Do not even think about them. Don't speculate about what
11 a witness might have said or what an exhibit might have
12 shown. These things are not evidence, and you are bound
13 by your oath not allow them to influence your decision in
14 any way.

15 Make your decision based only on the evidence that
16 I have defined here and nothing else.

17 You should use your own common sense in weighing
18 the evidence. Consider the evidence in light of your
19 everyday experience with people and events, and give it
20 whatever weight you believe it deserves. If your
21 experience tells you that certain evidence leads you to a
22 conclusion, you are free to reach that conclusion.

23 Now some you may have heard of the terms like
24 "direct evidence" and "circumstantial evidence."

25 Direct evidence is simply evidence like the

1 testimony of an eyewitness, which if you believe it,
2 directly proves a fact. If a witness testified that he
3 saw it raining outside and you believed him, that would be
4 direct evidence that it was raining.

5 Circumstantial evidence is simply a chain of
6 circumstances that indirectly proves a fact. If someone
7 walked into the courtroom wearing a raincoat covered with
8 drops of water and carrying a wet umbrella, that would be
9 circumstantial evidence from which you could conclude that
10 it was raining outside.

11 It is your job to decide how much weight to give
12 the direct and the circumstantial evidence in this case.
13 The law makes no distinction between the weight that you
14 should give to either one, or says that one is any better
15 evidence than the other.

16 You should consider all the evidence, both direct
17 and circumstantial, and then give it whatever weight you
18 believe it deserves.

19 Another part of your job as jurors is to decide
20 how credible or believable each witness was. This is your
21 job and not mine. It's up to you decide if a witness'
22 testimony was believable, and how much weight you think it
23 deserves. You are free to believe everything that a
24 witness said or only part of it or none of it at all, but
25 you should act reasonably and carefully in making these

1 decisions.

2 Let me suggest some things for you to consider in
3 evaluating each witness' testimony:

4 Ask yourself if the witness was able to clearly
5 see or hear the events. Sometimes even an honest witness
6 may not have been able to see or hear what was happening,
7 and may make a mistake.

8 Ask yourself how good the witness' memory seemed
9 to be. Did the witness seem able to accurately remember
10 what happened?

11 Ask yourself if there was anything else going on
12 that might have interfered with the witness' ability to
13 perceive or remember the events.

14 Ask yourself how the witness acted while
15 testifying. Did the witness appear honest or did the
16 witness appear to be lying?

17 Ask yourself if the witness had any relationship
18 to the government or the defendants, or anything to gain
19 or lose from the case that might influence that witness'
20 testimony.

21 Consider yourself -- or ask yourself if the
22 witness had any bias or prejudice or reason for testifying
23 that might cause the witness to lie or to slant the
24 testimony in favor of one side or the other.

25 Ask yourself if the witness testified

1 inconsistently while on the witness stand, or if the
2 witness said or did something or failed to say or do
3 something that at any other time would be inconsistent
4 with what the witness said while testifying.

5 If you believe that the witness was inconsistent,
6 ask yourself if this makes the witness' testimony less
7 believable. Sometimes it may. Other times it may not.
8 Consider whether the inconsistency was about something
9 important or about some unimportant detail.

10 Ask yourself if it seemed like an innocent mistake
11 or if seemed deliberate.

12 And ask yourself how believable the witness'
13 testimony was in light of all of the other evidence in the
14 case. Was the witness' testimony supported or
15 contradicted by other evidence that you did find
16 believable? If you believe that a witness' testimony was
17 contradicted by other evidence, remember that people
18 sometimes forget things that even two honest people who
19 witnessed the same event may not describe it exactly the
20 same way.

21 These are only some of the things that you may
22 consider in deciding how believable each witness was. You
23 may also consider other things that you think shed some
24 light on the witness' believability.

25 Use your own common sense and your everyday

1 experience in dealing with other people, and then decide
2 what testimony you believe, and how much weight you think
3 it deserves.

4 One more point about witnesses. Sometimes jurors
5 wonder if the number of witnesses who testified makes any
6 different. Don't make any decisions based only on the
7 number of witnesses who testified. What's more important
8 is how believable the witnesses were, and how much weight
9 you think their testimony deserves. Concentrate on that
10 and not on the numbers.

11 There is one more general subject that I would
12 like to talk to you about before I explain the elements of
13 the crimes charged in this case.

14 The lawyers for both sides have objected to some
15 things that were said or done during the trial. Don't
16 hold that against either side. The lawyers have a duty to
17 object whenever they think that something is not permitted
18 by the Rules of Evidence. These rules are designed to
19 make sure both sides get a fair trial.

20 And don't interpret my rulings on their objections
21 as any indication of how I think the case should be
22 decided. My rulings are based on the Rule of Evidence,
23 and not how I feel about the case.

24 Remember that your decision must be based only on
25 the evidence that you saw and heard here in court.

1 That concludes the part of my instructions
2 explaining your duties and the general rules that apply in
3 every criminal case. In a moment I will explain the
4 elements of the crimes that the defendants are accused of
5 committing, but before I do that, I want to emphasize that
6 a defendant is on trial only for the particular crimes
7 charged in the indictment. Your job is limited to
8 deciding whether the government has proved the crimes
9 charged.

10 Keep in mind that whether anyone else should be
11 prosecuted or convicted for these crimes is not a matter
12 proper for you to consider. The possible guilt of others
13 is no defense to a criminal charge. Your job is to decide
14 if the government has proved a particular defendant guilty
15 of a particular crime that is charged. Don't let the
16 possible guilt of others influence your decision in any
17 way.

18 The defendants have been charged with different
19 crimes. I'll explain to you in more detail shortly which
20 defendants have been charged with which crimes, but before
21 I do that, I want to emphasize several things.

22 The number of charges is no evidence of guilt, and
23 this should not influence your decision in any way. In
24 our system of justice, guilt or innocence is personal and
25 individual. It is your duty to separate and separately

1 consider the evidence against each defendant on each
2 charge, and to return a separate verdict for each of them.
3 For each one, you must decide whether the government has
4 proved -- has presented proof beyond a reasonable doubt
5 that a particular defendant is guilty of a particular
6 charge.

7 Your decision on any one defendant or charge,
8 whether it is guilty or not guilty, should not influence
9 your decision on any of the other defendants or charges.

10 Next, I want to say a word about the dates
11 mentioned in the indictment.

12 In Count 1 and Count 32, the indictment alleges
13 that the charges occurred on a date unknown, but starting
14 no later than the year 2003, and continuing until the date
15 of the last indictment being January 3, 2018.

16 In the remaining counts, the indictment alleges
17 that the charges occurred on or about certain dates. The
18 government does not have to prove that these crimes
19 happened on or during those exact dates, but the
20 government must prove that the crimes happened reasonably
21 close to those dates.

22 Next, I want to explain something about proving a
23 defendant's state of mind.

24 Ordinarily there's no way that a defendant's state
25 of mind can be proved directly because no one can read

1 another person's mind and tell what that person is
2 thinking, but a defendant's state of mind can be prove
3 indirectly from the surrounding circumstances. This
4 includes things like what the defendant said, what the
5 defendant did, how the defendant acted, and any other
6 facts or circumstances in which circumstances in evidence
7 that show what was in the defendant's mind.

8 You may also consider the natural and probable
9 results of any acts that the defendant knowingly did or
10 did not do, and whether it is reasonable to conclude that
11 the defendant intended those results. This, of course, is
12 all for you to decide.

13 Additionally, if a defendant intended to kill one
14 person but instead unintentionally killed or harmed
15 another, the crime is the same as if the first person had
16 actually been killed or harmed. This is called
17 transferred intent.

18 Although the indictment charges that the statute
19 was violated by acts that are connected by the word "and",
20 and it is sufficient if the evidence establishes a
21 violation of the statute by any one of the acts charged.
22 This, of course, must be prove beyond a reasonable doubt.

23 The defendants are charged with various crimes
24 about which I will instruct you shortly. Each charge is
25 called a count. I will refer to each count by the number

1 assigned to it in the charging instrument called an
2 indictment, but you will not be furnished with the
3 indictment itself, because an indictment is merely a
4 statement of charges and not itself evidence. I will
5 summarize the allegations in the indictment for you now.

6 Count 1 charges all the defendants: Eugene
7 Fisher, Corey Bailey, Robert Brown, II, Arlandis Shy,
8 Keithon Porter with RICO conspiracy.

9 The RICO conspiracy alleges that from the
10 beginning on a date unknown, but starting no later than
11 the year 2003, and continuing to the date of the late
12 indictment, January 3, 2018, the defendants who were
13 alleged members or associates of an enterprise known as
14 the Seven Mile Bloods, conspired and agreed to knowingly
15 and unlawfully participate in the conduct of the affairs
16 of the Seven Mile Bloods through a pattern of racketeering
17 activity, consisting of multiple acts involving first
18 degree murder, attempted murder, conspiracy to commit
19 murder, robbery, distribution of controlled substances,
20 conspiracy to distribute controlled substances, and
21 witness intimidation.

22 The purposes of the Seven Mile Bloods enterprise
23 alleged in the indictment were:

24 A, maximizing profits for enterprise members from
25 a variety of illegal activity.

1 B, preserving and protecting the power, territory
2 and profits of the enterprise through the use of
3 intimidation and violence, including assaults and threats
4 of violence.

5 C, promoting and enhancing the enterprise and its
6 members and associates' activities.

7 And D, keeping victims in fear of the enterprise,
8 and in fear of its members and associates through threats
9 of violence and violence.

10 Count 2 of the indictment charges the defendant
11 Robert Brown, II with violating federal law by committing
12 or aiding and abetting the commission of murder in aid of
13 racketeering, involving the alleged murder of Cleo
14 McDougal on June 7, 2006.

15 Count 3 of the indictment charges the defendant
16 Robert Brown, II with use of a firearm in furtherance of a
17 crime of violence causing death, or aid and abetting this
18 offense involving the alleged murder of Cleo McDougal on
19 June 7, 2006.

20 Count 4 of the indictment charges the defendant
21 Corey Bailey with violating federal law by committing or
22 aiding and abetting in the commission of murder in aid of
23 racketeering involving the alleged murder of Djuan Page on
24 July 14, 2014.

25 Count 5 of the indictment charges the defendant

1 Corey Bailey with use of a firearm in furtherance of a
2 crime of violence causing death, or aiding and abetting
3 this offense involving the alleged murder of Djuan Page on
4 July 14, 2014.

5 Count 6 of the indictment charges the defendant
6 Corey Bailey with violating federal law by committing or
7 aiding and abetting in the commission of attempted murder
8 in aid of racketeering involving the alleged attempted
9 murder of Michael Davis on July 14, 2014.

10 Count 7 of the indictment charges the defendant
11 Corey Bailey with violating federal law by committing or
12 aiding and abetting the commission of attempted murder in
13 aid of racketeering involving the alleged attempted murder
14 of Martez Davis on July 14, 2014.

15 Count 8 of the indictment charges defendant Corey
16 Bailey with violating federal law by committing or aiding
17 and abetting the commission of attempted murder in the aid
18 of racketeering involving the alleged attempted murder of
19 Corey Crawford of July 14, 2014.

20 Count 12 of the indictment charges Corey Bailey
21 with violating federal law by using and carrying a firearm
22 during and in the relation to a crime of violence or
23 aiding and abetting this offense involving the alleged
24 attempted murders on July 14, 2014.

25 Count 13 of the indictment charges the defendant

1 Keithon Porter with violating federal law by committing,
2 or aiding and abetting the commission of attempted murder
3 in aid of racketeering involving the alleged attempted
4 murder of Raphael Carter on May 1, 2015.

5 Count 15 of the indictment charges Keithon Porter
6 with violating federal law by using and carrying a firearm
7 during and in relation to a crime of violence, or aiding
8 and abetting this offense involving the alleged attempted
9 murder of Raphael Carter on May 1, 2015.

10 Count 16 of the indictment charges the defendants
11 Arlandis Shy and Keithon Porter with violating federal law
12 by committing, or aiding and abetting the commission of
13 murder in aid of racketeering involving the alleged murder
14 of Dvante Roberts on May 8, 2015.

15 Count 17 of the indictment alleges that the
16 defendants Arlandis Shy and Keithon Porter -- let me
17 restate that.

18 Count 17 of the indictment charges the defendants
19 Arlandis Shy and Keithon Porter with use of a firearm in
20 furtherance of a crime of violence causing death, or
21 aiding and abetting this offense involving the alleged
22 murder of Dvante Roberts on May 8, 2015.

23 Count 18 of the indictment charges the defendants
24 Arlandis Shy and Keithon Porter with violating federal law
25 by committing, or aiding and abetting the commission of

1 attempted murder in aid of racketeering involving the
2 alleged attempted murder of Marquis Wicker on May 8, 2015.

3 Count 19 of the indictment charges the defendants
4 Arlandis Shy and Keithon Porter with violating federal law
5 by committing, or aiding and abetting the commission of
6 attempted murder in aid of racketeering involving the
7 alleged attempted murder of Darrio Roberts on May 8, 2015.

8 Count 22 of the -- excuse me. Count 20 of the
9 indictment charges defendant Keithon Porter with violating
10 federal law by committing, or aiding and abetting the
11 commission of attempted murder in aid of racketeering
12 involving the alleged attempted murder of Jesse Ritchie on
13 May 8, 2015.

14 Count 24 of the indictment charges the defendants
15 Arlandis Shy and Keithon Porter with violating federal law
16 by using and carrying a firearm during and in relation to
17 a crime of violence, or aiding and abetting this offense
18 involving the alleged attempted murders on May 8, 2015.

19 Count 25 of the indictment charges the defendants
20 Eugene Fisher and Robert Brown with violating federal law
21 by committing, or aiding and abetting the commission of
22 attempted murder in aid of racketeering involving the
23 alleged attempted murders of Derrick Peterson, Darnell
24 Canady and Jason Gaskin on May 10, 2015.

25 Count 27 of the indictment charges Eugene Fisher

1 and Robert Brown with violating federal law by using and
2 carrying a firearm during and in relation to a crime of
3 violence, or aiding and abetting this offense involving
4 the alleged attempted murders on May 10, 2015.

5 Count 32 of the indictment charges all of the
6 defendants with aiding and abetting each other and others
7 in possessing firearms in furtherance of a crime of
8 violence, which in this case is conspiracy to commit the
9 crime of racketeerings as alleges in Count 1.

10 Count 33 charges Eugene Fisher with violating
11 federal law by being a convicted felon in possession of a
12 firearm on or about September 26, 2015.

13 Count 34 of the indictment charges Eugene Fisher
14 with violating federal law by being a convicted felon in
15 possession of a firearm or ammunition on or about
16 November 12, 2015.

17 The following instructions relate to racketeering
18 conspiracy as charged in Count 1, and possession of a
19 firearm in furtherance in the crime of violence
20 represented in Count 32, involving the defendants Eugene
21 Fisher, Corey Bailey, Robert Brown, II, Arlandis Shy and
22 Keithon Porter.

23 Count 1 charges that from the beginning -- from
24 beginning on a date unknown, but starting no later than
25 the year 2003, and continuing to the date of the

1 indictment in this case, January 3, 2018, in the Eastern
2 District of Michigan and elsewhere, Eugene Fisher, Corey
3 Bailey, Robert Brown, II, Arlandis Shy and Keithon Porter,
4 and other individuals knowingly agreed to conduct affairs
5 of an association of persons called the Seven Mile Bloods
6 through a pattern of racketeering activity.

7 The law of the United States is that whoever
8 conspires to conduct the affairs of any enterprise through
9 a pattern of racketeering activity commits a crime, if the
10 enterprise affects interstate or foreign commerce.

11 In order to convict any one of these defendants of
12 the crime charged in Count 1, the RICO conspiracy, the
13 evidence presented during trial must prove each of the
14 following five elements beyond a reasonable doubt:

15 One, the enterprise that is alleged in the
16 indictment existed.

17 Two, a particular defendant was associated with
18 the enterprise.

19 Three, a particular defendant knowingly agreed to
20 conduct or participate directly or indirectly in the
21 conduct of the enterprise.

22 Four, that a particular defendant and at least one
23 other conspirator agreed that the defendant or a
24 conspirator would engage in a pattern of racketeering,
25 that is, commit at least two acts of racketeering of the

1 type I will describe shortly in furtherance of the
2 enterprise.

3 And five, the activities of the enterprise
4 affected interstate or foreign commerce.

5 Now I will define for you those five elements in
6 additional detail.

7 As I just said, the first element of Count 1
8 requires that the evidence prove beyond a reasonable doubt
9 that the Seven Mile Bloods existed as an enterprise as
10 alleged in the indictment.

11 The term "enterprise" can include a group of
12 people associated together for a common purpose of
13 engaging in a course of conduct. This group maybe
14 associated together for purposes that are both legal and
15 illegal.

16 For to you find that the enterprise existed, the
17 government must prove an enterprise existed by evidence of
18 an ongoing organization, formal or informal, and by
19 evidence that the various associates functioned as a
20 continuing unit. The enterprise must have the three
21 following structural features:

22 One, a common purpose.

23 Two, relationships among those associated with the
24 enterprise.

25 And three, longevity sufficient to permit these

1 associates to pursue the enterprise's purposes.

2 In considering whether a group is an enterprise,
3 you may consider whether it has an ongoing organization or
4 structure, either formal or informal, and whether the
5 various members of the group functioned as a continuing
6 unit. A group may continue to be an enterprise even if
7 the changes membership by gaining or losing members over
8 time.

9 The government must prove that the group described
10 in the indictment was the enterprise charged, but need not
11 prove each and every allegation in the indictment about
12 the enterprise or the manner in which the enterprise
13 operated.

14 The government need not prove the association had
15 any form or structure beyond the minimum necessary to
16 conduct the charged pattern of racketeering.

17 The second element that the evidence presented
18 during trial must prove beyond a reasonable doubt for you
19 to find the defendant guilty of Count 1, is that the
20 defendant was associated with the enterprise.

21 To associate means to join as a partner, fellow
22 worker, colleague, friend, companion or ally. To be
23 associated with an enterprise, a person must be involved
24 with the enterprise in a way that is related to its
25 affairs or common purpose, although the person need not

1 have a stake in the goals of the enterprise. A person may
2 be associated with the enterprise without being so
3 throughout its existence.

4 A person is associated with an enterprise when,
5 for example, he joins with other members of the enterprise
6 and knowingly aids or furthers the activities of the
7 enterprise. The evidence is not required to prove that
8 any defendant had a formal position in the enterprise, or
9 participated in the activities of the enterprise, or had
10 free knowledge of all the enterprise activities.

11 However, mere presence in an area where alleged
12 racketeering acts may have been committed is not by itself
13 sufficient to prove that a defendant was associated with
14 the enterprise.

15 For example, a defendant is not a member of a
16 conspiracy just because he knew or was associated with
17 people who were involved in the conspiracy, knew there was
18 a conspiracy, and or was present during conspiratorial
19 discussions.

20 The third element the evidence presented at trial
21 must prove beyond a reasonable doubt for you to find a
22 defendant guilty of Count 1, is that the defendant agreed
23 to conduct or participate in the conduct of the affairs of
24 the enterprise.

25 One way to show that is with evidence that the

1 defendant agreed that he or another conspirator would
2 intentionally perform acts, functions or duties which were
3 necessary to or helpful in the operation of the
4 enterprise.

5 Another way to show it is with evidence -- another
6 way to show is with evidence that the defendant agreed
7 that he or one of the other companions would have some
8 part in directing the enterprise's affairs.

9 However, it is not necessary for the evidence to
10 show that the defendant you are considering exercised
11 significant control over or within the enterprise, or that
12 he had a formal position in the enterprise, or that he had
13 primary responsibility for the enterprise's affairs.

14 In order to have conducted or participated in the
15 conduct of the affairs of an enterprise, a person need not
16 have participated in all of the activities alleged in
17 Count 1. Still the government must prove that a defendant
18 agreed to conduct or participate in the affairs of the
19 enterprise.

20 The fourth element that the evidence must prove
21 beyond a reasonable doubt for you to find a defendant
22 guilty of Count 1 is that the defendant under
23 consideration agreed that he or one or more of the other
24 conspirators were associated with the Seven Mile Bloods
25 enterprise, would engage in a pattern of racketeering that

1 is intentionally commit or cause, or help to commission of
2 two or more racketeering acts that I will describe to you.
3 The enterprise (sic) is not required to prove that
4 racketeering acts were actually committed, or that
5 defendant agreed to personally commit the racketeering
6 acts.

7 The evidence must show three things beyond a
8 reasonable doubt to establish a pattern of racketeering
9 activity:

10 One, the defendant agreed that he or one or more
11 of the other conspirators would commit at least two acts
12 involving murder, robbery, conspiracy to distribute, and
13 distribution of controlled substances, witness
14 intimidation or two different acts of the same types
15 described above. I will describe each of these acts in
16 more detail below.

17 Two, the racketeering acts on which you agree had
18 a meaningful connection to the enterprise and were related
19 to each other. The racketeering acts may be considered
20 related to each other if they had the same or similar
21 purposes, results, participants, victims or methods of
22 commission, or were otherwise interrelated by
23 distinguishing characteristics, that is, the acts of
24 racketeering cannot merely be isolated events.

25 You may find that two or more racketeering acts

1 are related even though they are not similar to each other
2 as long as they both relate to the activities of the
3 enterprise.

4 For example, two racketeering acts are related to
5 each other, and have a meaningful connection to the
6 enterprise if the evidence shows that both acts were
7 possible solely by virtue of a conspirator's position in
8 the enterprise, or that his involvement in or control over
9 its affairs or by evidence that a defendant's
10 possession -- or position in the enterprise facilitated
11 his commission of the racketeering acts, or by evidence
12 that both of the racketeering acts benefitted the
13 enterprise or were authorized by the enterprise or
14 promoted or furthered the purposes of the enterprise.

15 Three, the racketeering activity must have
16 extended over a substantial period of time or posed a
17 threat of continuing criminal activity. The threat of
18 continued criminal activity is established when the
19 evidence shows that the racketeering activity is part of a
20 long term association that exists for criminal purposes,
21 or when the racketeering act is shown to be the regular
22 way of conducting the affairs of the enterprise.

23 The racketeering acts that are charged in Count 1
24 of the indictment are all themselves violations of
25 Michigan or United States law. You should apply the

1 following instructions when you consider whether the
2 evidence shows beyond a reasonable doubt that one or more
3 of the defendants agreed that the racketeering acts
4 involving murder, robbery, conspiracy to distribute and
5 distribution of controlled substances, witness
6 intimidation or any combination thereof would be committed
7 to further the enterprise.

8 Racketeering activity as defied in the RICO
9 statute includes specific kinds of crimes under state or
10 federal law. Count 1 alleges that the defendants agreed
11 that specific crimes of racketeering activity of the
12 following types would be committed:

13 First degree premeditated murder under Michigan
14 law. One type of racketeering act involving murder is
15 what is known as first degree murder. To prove first
16 degree murder the government must prove each of the
17 following elements beyond a reasonable doubt:

18 First, the defendant or a conspirator caused the
19 death of another person, that is, that the other person
20 died as a result of the act or acts committed by the
21 defendant or the conspirator.

22 Second, that the defendant or the conspirator
23 intended to kill the deceased.

24 Third, that this intent to kill was premedicated,
25 that is, thought out beforehand.

1 And fourth, that the killing was deliberate, which
2 means that the defendant or a conspirator considered the
3 pros and cons of the killing, and thought about and chose
4 his actions before he did it. There must be have been a
5 real and substantial reflection for long enough to give a
6 reasonable person a chance to think twice about the intent
7 to kill. The law does not say how much time is needed.
8 It's up to you to decide if enough time passed under the
9 circumstances of this case. The killing cannot be the
10 result of a sudden impulse without thought or reflection.

11 You must think about all of the evidence in
12 deciding what the defendant's state of mind was at the
13 time of the alleged killing.

14 State of mind may be inferred from the kind of
15 weapon that was used, the type of wounds inflicted, the
16 acts and words of the defendant, or any other
17 circumstances surrounding the alleged killing.

18 Premeditation and deliberation may be inferred
19 from any actions of the defendant which show planning or
20 from any other circumstances surrounding the killing.

21 Another type of racketeering activity -- excuse
22 me.

23 Another type of racketeering act involving murder
24 is what is known as assault with intent to murder commonly
25 referred to as attempted murder. To prove assault with

1 intent to murder, the government must prove each of the
2 following elements beyond a reasonable doubt:

3 First, that the defendant or a conspirator tried
4 to physically injure another person.

5 Second, that when the defendant or a conspirator
6 committed the assault, he had the ability to cause the
7 injury or at least believe that he had the ability to do
8 so.

9 And third, the defendant or a conspirator intended
10 to kill the person he assaulted.

11 You should follow the following instructions when
12 you consider whether the evidence shows beyond a
13 reasonable doubt that the defendant agreed that either he
14 or another conspirator would commit a racketeering act
15 involving robbery. To prove a robbery, the government
16 must prove each following elements beyond a reasonable
17 doubt:

18 First, that the defendant or a conspirator used
19 force or violence against another person, assaulted
20 another person or put another person in fear.

21 Second, that a defendant or a conspirator did so
22 while he was in the course of committing a larceny. A
23 larceny is the taking or movement of someone's property or
24 money with the intent to take it away from that person
25 permanently. In the course of committing a larceny

1 includes act that occurred in an attempt to commit the
2 larceny or during the commission of a larceny, or in
3 flight after the commission of a larceny, or in an the
4 attempt to retain possession of the property or money.

5 Third, the victim was presence when the defendant
6 or a conspirator was in the course of committing a
7 larceny.

8 Another type of racketeering act alleged is the
9 federal crime of distribution of a controlled substance.

10 To prove a racketeering act of distribution of a
11 controlled substance, the government must prove each of
12 the following elements beyond a reasonable doubt:

13 First, that the defendant or a conspirator
14 knowingly or intentionally distributed a controlled
15 substance.

16 And second, that the defendant or a conspirator
17 knew at the time of the distribution that the substance
18 with a controlled substance, and I'll give you more
19 detailed instructions on some of these terms.

20 You are instructed as a matter of law that
21 cocaine, cocaine base, crack cocaine, heroin, marijuana,
22 Oxycodone, Xanax, Opana, Oxymorphone and Alprazolam --
23 whatever close to that. You can see it printed on the
24 page -- are controlled substances.

25 The term "distribute" means the defendant or the

1 conspirator delivered or transferred a controlled
2 substance. The term "distribute" includes the actual,
3 constructive or attempted transfer of a controlled
4 substance. The term "distribute" includes the sale of a
5 controlled substance.

6 To prove that the defendant or a conspirator
7 knowingly distributed a controlled substance, the
8 defendant or a conspirator did not have to know that the
9 substance was a specific controlled substance. It is
10 enough if he knew that it was some kind of controlled
11 substance.

12 Further, the defendant or a conspirator did not
13 have to know how much of a controlled substance he
14 distributed. It is enough that the defendant or
15 conspirator knew that they distributed some quantity of a
16 controlled substance.

17 Another type of racketeering act alleged is the
18 federal crime of conspiracy to distribute a controlled
19 substance. This type of racketeering act occurs when two
20 or more persons conspire or agree to commit a drug crime,
21 even if they never achieve their goal. To prove a
22 racketeering act of conspiring to distribute a controlled
23 substance, the government must prove each following
24 elements beyond a reasonable doubt:

25 First, that two or more persons conspired or

1 agreed to distribute a controlled substance.

2 And second, that the defendant or a conspirator
3 knowingly and voluntarily joined the drug conspiracy.

4 Now I will give you more detailed instructions on
5 some of these charges.

6 With regard to the first element, a criminal
7 agreement, the government must prove that two or more
8 persons conspired or agreed to cooperate with each other
9 to distribute a controlled substance.

10 This does not require proof of much any formal
11 agreement, written or spoken, nor does this require proof
12 that everyone involved agreed on all of the details, but
13 prove that people simply met together from time to time
14 and talked about common interests or engaged in similar
15 conduct is not enough to establish a criminal agreement.
16 These are things that you may consider in deciding whether
17 the government has proved an agreement, but without more
18 they're not enough.

19 What the government must prove is that there was a
20 mutual understanding, either spoken or unspoken, between
21 two or more people to cooperate with each other, to either
22 distribute a controlled substance or possess a controlled
23 substance with the intent to distribute. This is
24 essential. An agreement can be proved indirectly by facts
25 and circumstances, but it is up to the government to

1 convince you that such facts and circumstances existed in
2 this particular case.

3 With regard to second element, the defendant or a
4 conspirator's connection to the drug conspiracy, the
5 government must prove that he knowingly and voluntarily
6 joined that drug agreement.

7 The government must prove that a defendant knew
8 the drug conspiracy's main purpose, and voluntarily joined
9 the drug conspiracy intending to help advance or achieve
10 its goals. This does not require proof that he knew
11 everything about the drug conspiracy, or everyone else
12 involved, or that he was a member of it from the
13 beginning, nor does it require proof that he prove that he
14 played a major role in the drug conspiracy, or that his
15 connection to it was substantial. A slight role or
16 connection may be enough.

17 Further, this does not require proof that he knew
18 the drug involved was a particular kind of controlled
19 substance. It is enough that he knew that it was some
20 kind of controlled substance, nor does this require proof
21 prove that he knew how much of the controlled substance
22 was involved. It is enough that he knew some quantity was
23 involved.

24 But proof that he simply knew about a drug
25 conspiracy or was present at times or associated with

1 members of the drug conspiracy is not, even if he approved
2 of what was happening and did not object to it. In a
3 similar way, just because he may have done something that
4 happened to help a drug conspiracy, does not necessarily
5 make him a conspirator in it. These are all things that
6 you may consider in deciding whether the government has
7 proved that a defendant joined a conspiracy, but without
8 more they are not enough.

9 A defendant's or conspirator's knowledge can be
10 proved indirectly by facts and circumstances that lead to
11 a conclusion that he knew the drug conspiracy's main
12 purpose, but it is up to the government to convince you
13 that you such facts and circumstances existed in this
14 particular case.

15 Another type of racketeering act alleged is the
16 federal offense of witness intimidation. To prove witness
17 intimidation, the government must prove each of the
18 following elements beyond a reasonable doubt:

19 First, that a defendant or a conspirator used or
20 attempted to use intimidation or threats against another
21 person.

22 Second, a defendant or conspirator acted
23 knowingly.

24 And third, a defendant or conspirator acted with
25 the intent to hinder, delay or prevent the communication

1 of information to a law enforcement officer of the United
2 States, or with the intent to influence, delay or prevent
3 the testimony of any person in an official proceeding.

4 And fourth, that such information related to the
5 commission or possible commission of a federal offense.

6 Intimidation includes frightening a person,
7 inspiring or affecting him by fear or deterring him by
8 threats. It does not matter whether or not the person
9 alleged to be object of the threat is actually frightened
10 or thinks he's in physical danger. It is enough that the
11 threat had a reasonable tendency to make the person
12 fearful.

13 A threat is simply the expression of an intention
14 to do harm. A threat may be communicated by words, as
15 well as gestures. In order to find that a defendant used
16 threats as charged in the indictment, you need not find
17 that he intended to carry out the threat. The real issue
18 is whether the words allegedly used were, in fact, uttered
19 by him and expressed an intention to do harm.

20 To act with the intent to influence the testimony
21 of a witness, means to act for the purpose of getting that
22 witness to change or color or shade his or her testimony
23 in some way. It is not necessary for the government to
24 prove that the witness's testimony was, in fact, changed
25 in any way.

1 An official proceeding means a proceeding before a
2 judge or court or federal agency. The proceeding may be
3 civil or criminal. The law does not require that the
4 federal proceeding be pending at the time of the
5 defendant's actions, as long as the proceeding was
6 foreseeable, such that the defendant knew that his actions
7 were likely to affect the proceeding.

8 In addition, government does not have to prove
9 that the defendant knew or that the proceeding would be in
10 federal court.

11 A few final points about racketeering acts. The
12 indictment charges that in some instances a defendant or a
13 conspirator attempted to commit the crimes that have been
14 listed as a racketeering act, aided and abetted the crimes
15 that have been listed as racketeering acts, or conspired
16 to commit the crimes listed as racketeering acts, all
17 under Michigan law. I will now explain those concepts to
18 you.

19 An attempt has two elements:

20 First, that the defendant or the conspirator
21 intended to commit the crime.

22 And second, that the defendant or the conspirator
23 took some action toward committing the crime -- the
24 alleged crime, but failed to complete the crime. It's not
25 enough to prove that the defendant made preparations for

1 committing the crime. Things like planning the crime or
2 arranging how it will be committed are just preparations.
3 They don't qualify as an attempt. In order to qualify as
4 an attempt, the action must go beyond mere preparation, to
5 the point where the crime would have been completed had it
6 not been interrupted by outside circumstances. To qualify
7 as an attempt, the act must clearly and directly be
8 related to the crime that the defendant is charged with
9 attempting and not some other objective.

10 For you to find aiding and abetting under Michigan
11 law, it is not necessary for you to find that the
12 defendant or a conspirator personally committed the crime.
13 Anyone who intentionally assists someone else in
14 committing a crime is as guilty as the person who directly
15 commits it and can be convicted of that crime as an aider
16 and abettor.

17 To prove this the government must prove each
18 following elements beyond a reasonable doubt:

19 First, that the alleged crime was actually
20 committed either by the defendant or someone else. It
21 does not matter whether anyone else has been convicted of
22 that crime.

23 Second, that before or during the crime, the
24 defendant or conspirator did something to assist in the
25 commission of the crime.

1 And third, that at the time the defendant or the
2 conspirator must have intended the commission of the crime
3 alleged, and must have known that the other person
4 intended its commission, or that the alleged crime was a
5 natural and probable consequences of the commission of the
6 crime intended.

7 Even if the defendant or conspirator knew that the
8 alleged crime was planned or being committed, the mere
9 fact that he was present when it was committed is not
10 enough to prove that he assisted in committing it.

11 To prove a conspiracy under Michigan law -- I'm
12 just thinking about break time, but I'll go a bit longer.

13 To prove a conspiracy under Michigan law, the
14 government must prove each the following beyond a
15 reasonable doubt:

16 First, that a defendant and others knowingly
17 committed -- agreed to commit a crime.

18 Second, that a defendant and others specifically
19 intended to commit or help commit that crime.

20 And third, that this agreement took place or
21 continued on or about the date alleged in the indictment,
22 that is between the years 2003 and January 3, 2018.

23 An agreement is the coming together or meeting of
24 the minds of two or more people, each person intending and
25 expressing the same purpose. It's not necessary for the

1 people involved to have made a formal agreement to commit
2 the crime or to have written down how they were going to
3 do it. In deciding whether there was an agreement to
4 commit a crime, you should think about how the
5 witnesses -- how the members of the alleged conspiracy
6 acted, and what they said, as well as all of the other
7 evidence.

8 To find a defendant guilty of conspiracy under
9 Michigan state law, you must be satisfied beyond a
10 reasonable doubt that there was an agreement to commit the
11 crime charged. However, you may infer that there was an
12 agreement from the circumstances, such as how the members
13 of the conspiracy alleged were acting.

14 If there was a conspiracy, you must decide whether
15 the defendant was a member of it. You may only consider
16 what the defendant did and said during the time the
17 conspiracy took place. A finding that the defendant was
18 merely with other people who were members of a conspiracy
19 is not enough by itself to prove that the defendant was
20 also a member.

21 In addition, the fact that a person did an act
22 that furthered the purpose of an alleged conspiracy is not
23 enough by itself to prove that a person was a member of
24 the conspiracy. It is not necessary for all the members
25 to know each other or to know all the details of how the

1 crime will be committed, but it must be shown beyond a
2 reasonable doubt that the person agreed to commit the
3 crime, and intended to commit or help commit it.

4 A defendant is not responsible for the acts of
5 other members of the conspiracy unless those acts are part
6 of the agreement or further the purposes of the agreement.
7 If a defendant agreed to commit a completely different
8 crime, then he is not guilty of conspiracy to commit the
9 crime charged. A person who joins a conspiracy after it
10 has already been formed is only responsible for what he
11 agreed to when joining, not for any agreement made by the
12 conspiracy before he joined. You may consider evidence
13 of what the other members of the alleged conspiracy did or
14 said before the defendant became a member, but only in
15 order to determine the nature and purpose of the
16 conspiracy after the defendant joined. Members of a
17 conspiracy are not responsible for what other members do
18 or say during the conspiracy.

19 Each defendant in this case is entitled to have
20 his guilt or innocence decided individually. You must
21 decide whether each defendant was a member of the alleged
22 conspiracy as if he were being tried separately. To
23 determine whether each defendant was a member of the
24 alleged conspiracy, you must decide whether each
25 individual defendant intentionally joined with anyone else

1 to commit the crime. It is not enough to find that there
2 was a criminal agreement to commit the crime charged.
3 Even if you do find that there was a conspiracy, you must
4 still determine whether each defendant separately was a
5 member of that conspiracy.

6 I think we'll break for five minutes.

7
8 (Jurors excused at 10:05 a.m.)
9

10 **THE COURT:** Okay. Is counsel satisfied with
11 the reading of the instructions thus far?

12 **MR. DALY:** So far.

13 **MR. FEINBERG:** So far.

14 **THE COURT:** Okay. Thank you. I want to note
15 a slight modification that was made to the jury
16 instructions that were agreed upon among all the parties
17 in case, and that is proposed Instruction Number 69, which
18 is a pattern instruction included, was agreed to be
19 modified by counsel in the case to address a concern
20 derived from Mr. Bilkovic's closing argument wherein he
21 expressed his hopes that he would get a chance to see the
22 notes of the jury, and specifically one juror who wrote, I
23 think, he said something like an encyclopedia size body of
24 notes. I'm sure that was an attempt -- actually kind of a
25 successful attempt at humor type. At least the jury

1 laughed.

2 **MR. S. SCHARG:** I think it was intellectually
3 dishonest, your Honor.

4 **THE COURT:** Yeah, right, and so -- but the
5 parties agreed to include an additional sentence --
6 paragraph to Number 69 which reads -- do I have a copy of
7 the amended -- which reads in the -- this is dealing with
8 juror notes, and it is a three paragraph instruction that
9 basically describes how they handle the notes in their
10 deliberations. There's a general statement in the first
11 paragraph.

12 The second paragraph tells them if they took
13 notes, whether or not they took notes, they all must
14 participate and form and express their own opinions.

15 And then the third and agreed upon added paragraph
16 reads: After this case is over, your notes, if any, will
17 be collected and destroyed.

18 **MR. S. SCHARG:** Satisfactory, your Honor.

19 **THE COURT:** Everybody else agree?

20 **MR. BILKOVIC:** There's nothing in there
21 though that mentions that we will not have access to them
22 at all because that should be in there, if not.

23 **THE COURT:** How are you as a typist?

24 **MR. BILKOVIC:** They understand that they will
25 be collected and destroyed. It doesn't let them know that

1 we can look at them prior, and I just think we should add
2 that in there, even if it is written in there, or you ad
3 lib it and give it to them when you are giving that
4 instruction.

5 **THE COURT:** Yes.

6 **MR. BILKOVIC:** Certainly the Court is correct
7 that I was making attempted humor. I know that I'm not
8 allowed to look at the notes. I just want the jurors to
9 make sure they understand that we're not allowed to look
10 at their notes.

11 **MR. SPIELFOGEL:** What we had talked about was
12 three would be no one will ever see your notes.

13 **THE COURT:** Right.

14 **MR. SPIELFOGEL:** And then Number 4 was after
15 your deliberations, your notes will be collected -- or as
16 you have stated, your notes, if any, will be collected and
17 destroyed. So just add that Number 3 that no one will
18 ever see your notes.

19 **THE COURT:** This instruction now will be in
20 Paragraph 3: After this case is over, your notes, if any,
21 will be collected and destroyed, and no one will ever see
22 your notes.

23 **MR. SPIELFOGEL:** Yes, your Honor.

24 **MR. WIGOD:** Your Honor, unfortunately I
25 noticed an error in the instructions that will need to be

1 to be corrected as well.

2 **THE COURT:** That already occurred?

3 **MR. WIGOD:** Sort of, minor, and this only
4 applies to Mr. Shy. So on Count 20, it only lists Keithon
5 Porter as being charged with that offense, and that's on
6 Page 93.

7 **THE COURT:** We have not reached that point
8 yet.

9 **MR. WIGOD:** No, but it was referenced earlier
10 during the summary of the indictment, and that's when I
11 caught it, but Page 93 should read: Count 20 of the
12 indictment charges the defendants Keithon Porter and
13 Arlandis Shy with violating federal law, similar to Count
14 19.

15 **THE COURT:** I'm back to Count 20.

16 **MR. WIGOD:** Yes. So Count 20, the first
17 paragraph should read: Count 20 of the indictment charges
18 defendants Keithon Porter and Arlandis Shy.

19 **THE COURT:** Oh, I see.

20 **MR. WIGOD:** It should read basically as in
21 Count 19 with just a different victim's name.

22 **THE COURT:** Okay. We can get both of those
23 down well before --

24 **MR. WIGOD:** Your Honor, that needs to be
25 corrected on Page 23, a summary of the indictment,

1 Paragraph 17 on Page 23.

2 **THE COURT:** Page 23?

3 **MR. WIGOD:** Yes, the bottom of the page. It
4 says Count 20 of the indictment charges Keithon Porter
5 with violating federal law. It should be Keithon Porter
6 and Arlandis Shy.

7 **MR. THEIS:** And that has been read to the
8 jury. We're giving them a printed copy of it. I don't
9 think we need to read it again.

10 **THE COURT:** Okay. I think we'll make the
11 correction in case they're consulting the instructions
12 back in jury deliberations, but since we're referring to
13 it again on Page 50, I don't think we need to read the
14 earlier reference, but I'm looking for that. Is it on
15 Page 22?

16 **MR. WIGOD:** Page 23, your Honor.

17 One other quick matter. I notice that the Court
18 gave verdict forms to each of the jurors individually. So
19 to avoid any confusion that they each have to fill out a
20 verdict form, could I suggest that the Court just add a
21 signature line for the foreperson on one set of the
22 verdict forms, and give that to them to sign and turn into
23 the Court at the appropriate time?

24 **THE COURT:** I had actually planned to pull
25 the verdict forms from all but one just so to keep it

1 straight. I put them in at this point because I usually
2 walk them through the verdict form.

3 **MR. WIGOD:** Okay. Thank you.

4
5 (Recess taken at 10:15 a.m.)

6
7 (Proceedings with jury at 10:28 a.m.)

8
9 **THE COURT:** All right, folks. You can take a
10 seat.

11 Okay. One other point about the fourth element of
12 Count 1. The charge in Count 1 is that the defendants
13 agreed to conduct the affairs of the enterprise through a
14 pattern of racketeering activity.

15 The evidence is not required to prove that a
16 particular defendant personally committed or agreed to
17 personally commit two racketeering acts. Rather, it is
18 enough if the evidence proves beyond a reasonable doubt
19 that a defendant agreed with another enterprise member or
20 associate that the defendant would participate in the
21 enterprise with the knowledge and intent that at least one
22 member of the conspiracy who could, but need not be the
23 defendant himself, would commit at least two racketeering
24 acts in the conduct of the affairs of the enterprise. The
25 evidence need only show that the defendant under your

1 consideration knew the general nature and common purpose
2 of the conspiracy, and that the conspiracy extended beyond
3 his individual role.

4 It is not enough that the evidence prove that a
5 particular defendant was a member of the conspiracy from
6 the beginning or until its end. Different persons may be
7 members of the conspiracy a different times. Also, a
8 defendant may be convicted as a conspirator, even though
9 he plays only a minor role in the conspiracy, provided
10 that you find beyond a reasonable doubt that the
11 conspiracy existed, and that the defendant knowingly
12 participated in it with the intent to accomplish its
13 objectives or assist other conspirators in accomplishing
14 its objectives.

15 It is also not necessary for a defendant to
16 participate in every phase of the criminal venture,
17 provided there is assent to contribute to a common
18 enterprise.

19 You may find all of the elements of the charge in
20 Count 1, such as the conspiratorial agreement, any
21 defendant's knowledge of it, and any defendant's
22 participation in the conspiracy from the circumstantial
23 evidence.

24 For example, if you find that the evidence proves
25 that the defendant or at least one other conspirator

1 committed several racketeering acts in furtherance of the
2 affairs of the enterprise, you may conclude that this
3 means they agreed to conduct the affairs of the enterprise
4 through those acts. It is entirely up to you to decide
5 whether all of the evidence, taken together, proves that a
6 particular defendant entered into the required
7 conspiratorial agreement.

8 The defendant (sic) need not prove a formal
9 agreement. A tacit or a mutual understanding among the
10 parties is sufficient to show a conspiratorial agreement.
11 Nor does the government have to prove that everyone
12 involved agreed on all of the details, but proof that
13 people simply met together from time to time, talked about
14 common interests or engaged in similar conduct is not
15 enough to establish a criminal agreement. These are
16 things that you may consider in deciding whether the
17 government has proved an agreement, but without more, they
18 are not enough.

19 And this relates to the fifth element of
20 interstate commerce. Interstate commerce means trade or
21 business or travel between states. The phrase engaged in
22 or the activities of which affect interstate commerce as
23 used in these instructions means that to be involved in or
24 to affect in some way trade or business or travel between
25 the states. This would include the purchase or sale of

1 the goods or supplies from or to a state other than the
2 state of Michigan, the use of interstate mail or wire
3 facilities or the causing of any of those things.

4 So if you find beyond a reasonable doubt that the
5 enterprise made, purchased, sold or moved goods or
6 services that had their origin or destination outside the
7 state of Michigan, or that the actions of the enterprise
8 affected in any degree the movement of money, goods or
9 services across state lines, then interstate commerce was
10 engaged in or affected.

11 The government need not prove that a defendant
12 engaged in interstate commerce, or that the acts of a
13 defendant affected interstate commerce. The focus is on
14 the enterprise and its effect on interstate commerce.
15 Interstate commerce is affected if you find that the
16 enterprise had any economic impact on the movement of
17 money, goods, services or persons from state to state. It
18 is not necessary that a particular defendant has
19 personally engaged in or affected interstate commerce.

20 The enterprise alleged here is alleged to have
21 engaged in economic and non-economic activity.

22 For example, a conspiracy to distribute or
23 distribution of controlled substance is economic activity.
24 Threats and acts involving murder are non-economic
25 activity.

1 For economic activity, the government must prove
2 that the activities of the enterprise, however minimally,
3 had an effect on commerce between two states. For
4 non-economic activity the government must prove that the
5 activity had a substantial effect on interstate commerce.

6 This concludes the portion of my instructions
7 defining the elements required for you to convict a
8 defendant of the RICO conspiracy. For you to find a
9 defendant guilty of this crime, you must be convinced that
10 the government has proved all the elements beyond a
11 reasonable doubt. Moreover, in order to convict a
12 defendant of the RICO conspiracy offense, you must
13 unanimously agree as to which type or types of
14 racketeering activity the defendant agreed would be
15 committed.

16 For example, at least two acts involving first
17 degree murder, attempted murder, conspiracy to commit
18 murder, robbery, distribution of controlled substances,
19 conspiracy to distribute controlled substances, witness
20 intimidation or any combination thereof. You need not
21 agree on the specific acts of racketeering activity a
22 defendant agreed would be committed.

23 If you are convinced that the government has
24 proved all of the elements for a defendant, say so by
25 returning a guilty verdict on this charge. If you have

1 reasonable doubt about any one of these elements, then you
2 must find the defendant not guilty of this charge.

3 If you find the defendant guilty of the RICO
4 conspiracy charge in Count 1, there are additional
5 questions that you must answer on a verdict form for that
6 defendant. When considering these questions, you must be
7 unanimous in determining whether the government has proved
8 beyond a reasonable doubt the question asked. If you find
9 that the government has not proved the particular
10 defendant guilty of the RICO conspiracy offense charged in
11 Count 1, then you do not need to answer those additional
12 questions.

13 Count 32 of the indictment charges Eugene Fisher,
14 Corey Bailey, Robert Brown, II, Arlandis Shy and Keithon
15 Porter with violating federal law by possessing a firearm
16 in furtherance of a crime of violence, or aiding and
17 abetting that offense. For you to find a defendant guilty
18 of this crime, you must find that the government has
19 proved each and every one following elements beyond a
20 reasonable doubt:

21 First, that the defendant committed the RICO
22 conspiracy charged in Count 1.

23 Second, that the defendant knowingly possessed a
24 firearm.

25 Third, that possession of the firearm was in

1 furtherance of the RICO conspiracy charged in Count 1.

2 Fourth, that at least one of the racketeering acts
3 committed in furtherance of the enterprise involved a
4 substance risk that physical force may be used against the
5 person or property of another.

6 Now I will give you more detailed instructions on
7 some of these terms.

8 The term "firearm" means any weapon which will, or
9 designed to, or may readily be converted to expel a
10 projectile by the action of an explosive. The firearm
11 need not be loaded.

12 The term "knowingly" means voluntarily and
13 intentionally, and not because of mistake or accident.

14 In order to prove "possession", the government
15 does not necessarily have to prove that a defendant
16 physically possessed the firearm. The law recognizes two
17 kinds of possession, actual possession and constructive
18 possession. Either of these, if proved by the government,
19 is sufficient.

20 To establish actual possession, the government
21 must prove that a defendant had direct physical control
22 over the firearm, and knew that he had control of it.

23 To establish constructive possession, the
24 government must prove that a defendant had the right to
25 exercise physical control over the firearm, and knew that

1 he had this right, and that he intended to exercise
2 physical control over the firearm at some point, either
3 directly or through others persons.

4 For example, if you left something with a friend
5 intending to come back later and pick it up, or intending
6 to send someone else to pick it up for you, you would have
7 constructive possession of it while it was in the actual
8 possession of your friend.

9 Further, the government does not have to prove
10 that a defendant was the only one who had possession of
11 the firearm. Two or more people can together share actual
12 or constructive possession over property, and if they do,
13 both are considered to have possession as far as the law
14 is concerned.

15 But understand, that just being present where
16 something is located does not equal possession. The
17 government must prove that the defendant had actual or
18 constructive possession of the firearm, and knew that he
19 did. This again, is all for you to decide.

20 The term "in furtherance of" means that the
21 firearm was possessed to advance or promote the crime
22 charged in Count 1. In deciding whether the firearm was
23 possessed to advance or promote the crime charged in Count
24 1, you may consider these factors:

25 Whether the firearm was strategically located so

1 it would be quickly and easily available for use; whether
2 the firearm was loaded, the type of weapon; whether the
3 possession of the firearm was legal; the type of crime
4 violence, and it the firearm was recovered, the time and
5 circumstances under which the firearm was found. This
6 list is not exhaustive.

7 If you're convinced the government has proved
8 these elements -- all of these elements, say so by
9 returning a guilty verdict on this charge. If you have
10 reasonable doubt about any of these elements, then you
11 must find the defendant not guilty of this charge.

12 Next we are going to discuss murder in aid of
13 racketeering as provided in Count 2, and use of a firearm
14 during and in relation to a crime of violence causing
15 death as set forth in Count 3 involving Mr. Robert Brown,
16 II.

17 Count 2 of the indictment charges the defendant
18 Robert Brown, II with violating federal law by committing,
19 or aiding and abetting in the commission of murder in aid
20 of racketeering involving the alleged murder of Cleo
21 McDougal on June 7, 2006.

22 In order to find the defendant guilty of this
23 crime, you must be convinced that the government has
24 proved each following elements beyond a reasonable doubt:

25 One, the Seven Mile Bloods enterprise existed as

1 alleged in the indictment.

2 Two, the enterprise was engaged in interstate
3 commerce, or its activities affected interstate commerce.

4 Three, that the enterprise was engaged in
5 racketeering activity.

6 Four, the defendant committed, or aided and
7 abetted the conviction of -- or the commission of first
8 degree murder of Cleo McDougal.

9 To prove first degree murder, the government must
10 prove each of the following elements beyond a reasonable
11 doubt:

12 A, that the defendant caused the death of another
13 person, that is, that the other person died as a result of
14 the act or acts committed by the defendant.

15 B, that the defendant intended to kill the
16 decease.

17 C, that this intent to kill was premeditated, that
18 is, thought out beforehand.

19 And D, that the killing was deliberate, which
20 means that the defendant considered the pros and cons of
21 the killing and thought about it and chose his actions
22 before he did it. There must have been real and
23 substantial reflection for long enough to give a
24 reasonable person a chance to think twice about the intent
25 to kill. The law does not say how much time is needed.

1 It is for you to decide if enough time has passed under
2 the circumstances of this case. The killing cannot be the
3 result of a sudden impulse without thought or reflection.

4 Five, the defendant's purpose in committing the
5 murder was to maintain or increase his position in the
6 enterprise. It is not necessary for the government to
7 prove that this was the defendant's sole purpose in
8 committing the murder. You need only find that it was an
9 animating purpose. For purposes of this element, it is
10 sufficient if the defendant committed the alleged murder
11 in furtherance of his membership in the enterprise, or
12 because he knew that it was expected of him by reason of
13 that membership.

14 Now I'm going to give you some detailed
15 instructions on this charge in addition to those given so
16 far.

17 A, you must think about all the evidence in
18 deciding what the defendant's state of mind was at the
19 time of the alleged killing.

20 State of mind may be inferred from the kind of
21 weapon used, the type of wounds inflicted, the acts and
22 words of the defendant, and any other circumstances
23 surrounding the alleged killing.

24 Premeditation and deliberation may be inferred
25 from any actions of the defendant which show planning or

1 from any other circumstances surrounding the killing.

2 Also, I have previously instructed you regarding
3 some of the terms contained above, such as enterprise,
4 engaged in the interstate commerce and racketeering
5 activity. Those instructions apply here as well.

6 If you're convinced that the government has proved
7 all of these elements for this charge, say so by returning
8 a guilty verdict on this charge. If you have a reasonable
9 doubt about any of the elements, then you should find the
10 defendant -- you must find the defendant not guilty of
11 this charge.

12 As it relates to the use and carrying of a firearm
13 during and in relation to a crime of violence causing
14 death in Count 3, Count 3 of the indictment charges the
15 defendant Robert Brown, II with using a firearm in
16 furtherance of a crime of violence causing death, or
17 aiding and abetting in this offense involving the alleged
18 murder of Cleo McDougal on June 7, 2006.

19 In order to find the defendant guilty of this
20 crime, you must be convinced that the defendant has proved
21 each of the following elements beyond a reasonable doubt:

22 One, that the defendant committed the crime of
23 violence charged this Count 2, namely murder in aid of
24 racketeering.

25 Two, the defendant knowingly used and carried -- or

1 carried a firearm during and in relation to the crime of
2 violence.

3 Three, in the course of committing the crime of
4 violence, the defendant caused the death of Cleo McDougal
5 through the use of a firearm.

6 Four, the defendant was an unlawful killing of a
7 human being with malice of aforethought.

8 Now I will give you more detailed instructions on
9 some of these terms.

10 To establish "use", the government must prove
11 active employment of the firearm during and in relation to
12 the crime charged. Active employment means activities
13 such as brandishing, displaying, bartering, striking with,
14 and most obviously firing or attempting to fire a firearm.

15 Carrying a firearm includes carrying it on or
16 about one's person. Carrying also includes knowingly
17 possessing and conveying a firearm in a vehicle in which
18 the person accompanies -- a vehicle which the person
19 accompanies including in the glove compartment or trunk.

20 The term "firearm" means any weapon which will or
21 is designed to, or may readily be converted to expel a
22 projectile by the actions of an explosive. The firearm
23 need not be loaded.

24 The phrase during to and in related to means that
25 the firearm must have some purpose or effect with respect

1 to the crime charged; in other words, the firearm must
2 facilitate or further or have the potential of
3 facilitating or furthering the crime charged, and its
4 presence or involvement cannot be the result of accident
5 or coincidence.

6 The term "knowingly" means voluntarily and
7 intentionally, and not because of accident or mistake.

8 The phrase "malice aforethought" means either to
9 kill another person deliberately and intentionally, or to
10 act with callus wanton disregard for human life. To find
11 malice aforethought, you need not be convinced that
12 defendant hated the person killed or felt ill will toward
13 the victim at the time.

14 If you are convinced that the government has
15 proved all of these elements for this charge, say so by
16 returning a guilty verdict on the charge. If you have a
17 reasonable doubt about any of these elements, then you
18 must find the defendant not guilty of this charge.

19 Next, we're going to deal with murder and
20 attempted murder in aid of racketeering, comprising Counts
21 4, 6, 7 and 8, and use of a firearm in furtherance of
22 crimes of violence in Counts 5 and 12 involving Corey
23 Bailey.

24 Count 4 of the indictment charges defendant Corey
25 Bailey with violating federal law by committing, or aiding

1 and abetting in the commission of murder in the aid of
2 racketeering involving the alleged murder of Djuan Page on
3 July 14, 2014.

4 In order to find the defendant guilty of this
5 crime, you must be convinced that the defendant (sic) has
6 proved each of the following elements beyond a reasonable
7 doubt:

8 One, the Seven Mile Bloods enterprise existed as
9 alleged in the indictment.

10 Two, the enterprise was engaged in interstate
11 commerce or its activities affected interstate commerce.

12 Three, that the enterprise was engaged in
13 racketeering activity.

14 Four, the defendant committed, or aided and
15 abetted in the commission of first degree murder of Djuan
16 Page. I previously provided you with the elements of
17 first degree murder set forth in Count 2.

18 Five, the defendant's purpose in committing the
19 murder was to maintain or increase his position in the
20 enterprise. It is not necessary for the government to
21 prove that this was the defendant's sole purpose in
22 committing the murder. You need only find that it was an
23 animating purpose. For purposes of this element, it is
24 sufficient if the defendant committed the alleged murder
25 in furtherance of his membership in the enterprise, or

1 because he knew that it was expected of him by reason of
2 that membership.

3 Now I will give you more detailed instructions on
4 this charge.

5 A, the previous explanations and definitions that
6 I provided you pertaining to first degree apply here as
7 well.

8 B, I also have previously instructed you regarding
9 some of the terms above, such as enterprise, engaged in
10 interstate commerce and racketeering activity. Those
11 instructions apply here as well.

12 And if you're convinced that the government has
13 proved all of these elements for this charge, say so by
14 returning a guilty verdict on this charge. If you have a
15 reasonable doubt about any of these elements, then you
16 must find the defendant not guilty of this charge.

17 Count 5, use of and carrying of a firearm during
18 and in relation to a crime of violence causing death.

19 Counsel 5 of the indictment charges the defendant
20 Corey Bailey with use of a firearm in furtherance of a
21 crime of violence causing death, or aiding and abetting
22 this offense involving the alleged murder of Djuan Page on
23 July 14, 2014.

24 In order to find the defendant guilty of this
25 crime, you must be convinced that the government has

1 proved each of the following elements beyond a reasonable
2 doubt:

3 One, that the defendant committed the crime of
4 violence charged in Count 4, namely murder in aid of
5 racketeering.

6 Two, that the defendant knowingly used or carried
7 a firearm during and in relation to a crime of violence.

8 Three, in the course of committing a crime of
9 violence, the defendant caused the death of Djuan Page
10 through the use of a firearm.

11 And four, the death was an unlawful killing of a
12 human being with malice of aforethought.

13 I've instructed you previously regarding some of
14 the terms contained above, like use, carrying, firearm,
15 during and in relation to, knowingly and malice of
16 aforethought. Those instructions apply her as well.

17 If you're convinced that the government has proved
18 all the elements for this charge, say so by returning a
19 guilty verdict on this charge. If you have a reasonable
20 doubt about any of these elements, then you must find the
21 defendant not guilty of this charge.

22 Count 6 of the indictment charges the defendant
23 Corey Bailey with violating federal law by committing, or
24 aiding and abetting in commission of attempted murder in
25 aid of racketeering involving the alleged attempt

1 murder -- attempted murder of Michael Davis on July 14,
2 2014.

3 In order to find the defendant guilty of this
4 crime, you must be convinced the government has proved
5 each of the following elements beyond a reasonable doubt:

6 One, that the Seven Mile Bloods enterprise existed
7 as alleged in the indictment.

8 Two, the enterprise was engaged in interstate
9 commerce or its activities affected interstate commerce.

10 Three, that the enterprise was engaged in
11 racketeering activity.

12 Four, that the defendant committed, or aided and
13 abetted in the commission of attempted murder of Michael
14 Davis.

15 To prove assault with intent to murder, the
16 government must prove each of the following elements
17 beyond a reasonable doubt:

18 That the defendant tried to physically injure
19 another person.

20 When the defendant committed the assault, he had
21 the ability to cause an injury or at least believed that
22 he had the ability to do so.

23 And that the defendant intended to kill the person
24 he assaulted.

25 Five, that the defendant's purpose in committing

1 the attempted murder was to maintain or increase his
2 position in the enterprise. It is not necessary for the
3 government to prove that this was the defendant's sole
4 purpose in committing the attempted murder. You need only
5 find that it was an animating purpose. For purposes of
6 this element, it is sufficient if the defendant committed
7 the alleged attempted murder in furtherance of his
8 membership in the enterprise, or because he knew that it
9 was expected of him by reason of that membership.

10 I have previously instructed you regarding some of
11 the terms contained above, such as enterprise, engaged in
12 interstate commerce, and racketeering activity. Those
13 instructions apply here as well.

14 If you're convinced that the government has proved
15 all of these elements for this charge, this say so by
16 returning a guilty verdict on this charge. If you have
17 reasonable doubt about any of these elements, then you
18 must find the defendant not guilty of this charge.

19 Count 7 of the indictment charges the defendant
20 Corey Bailey with violating federal law. By committing,
21 or aiding and abetting the commission of attempted murder
22 in aid of racketeering involving the alleged attempted
23 murder of Martez Davis on July 14, 2014.

24 In order to find the defendant guilty of this
25 crime, you must be convinced that the government has

1 proved each of the following elements beyond a reasonable
2 doubt:

3 One, the Seven Mile Bloods enterprise existed as
4 alleged in the indictment.

5 Two, the enterprise was engaged in interstate
6 commerce or its activities affected interstate commerce.

7 Three, that the enterprise was engaged in
8 racketeering activity.

9 And four, that the defendant committed, or aided
10 and betted in the commission of the attempted murder of
11 Martez Davis.

12 I have previously provided you with the elements
13 of attempted murder, also known as assault with intent to
14 murder. You can see that as outlined in Count 6.

15 And five, the defendant's purpose in committing
16 the alleged attempted murder was to maintain or increase
17 his position within the enterprise. It's not necessary
18 for the government to prove that this was the defendant's
19 sole purpose in committing the alleged murder or attempted
20 murder, but you need only to find that it was an animating
21 purpose. For purposes of this element, it's sufficient if
22 the defendant committed the alleged attempted murder in
23 furtherance of his membership in the enterprise, or
24 because he knew that it was expected of him by reason of
25 that membership.

1 I've also previously instructed you regarding some
2 of the terms contained about, such as, enterprise, engaged
3 in interstate commerce, and racketeering activity. Those
4 instructions apply here as well.

5 If you are convinced that the government has
6 proved all these elements for this charge, say so by
7 returning a guilty verdict on this charge. If you have a
8 reasonable doubt about any of these elements, then you
9 must find the defendant not guilty of this charge.

10 Count 8 of the indictment charges the defendant
11 Corey Bailey with violating federal law by committing, or
12 aiding and abetting the commission of attempted murder in
13 aid of racketeering involving the alleged attempted murder
14 of Corey Crawford on July 14, 2014.

15 To find the defendant guilty of this crime, you
16 must be convinced that the government has proved each of
17 the following elements beyond a reasonable doubt:

18 One, that the Seven Mile Bloods enterprise existed
19 as alleged in the indictment.

20 Two, that the enterprise was engaged in interstate
21 commerce or its activities affected interstate commerce.

22 Three, that the enterprise was engaged in
23 racketeering activity.

24 Four, the defendant committed, or aided and
25 abetted in the commission of the attempted murder of Corey

1 Crawford. I've previously provided you with the elements
2 of attempted murder, as well as -- which is also known as
3 assault with intent to murder as set forth in Count 6.

4 Number five, the defendant's purpose in committing
5 the attempted murder was to maintain or increase his
6 position in the enterprise. It's not necessary for the
7 government to prove that this was the defendant's sole
8 purpose in committing the attempted murder. You need only
9 find that it was an animating purpose. For purposes of
10 this element, it is sufficient if the defendant committed
11 the alleged attempted murder in furtherance of his
12 membership in the enterprise, or because he knew that it
13 was expected of him by reason of that membership.

14 I have previously instructed you regarding some of
15 the terms contained above, such as, enterprise, engaged in
16 interstate commerce, and racketeering activity. These
17 instructions apply here as well.

18 If you're convinced that the government has proved
19 all of these elements for this charge, say so by returning
20 a guilty verdict on this charge. If you have a reasonable
21 doubt about any of these elements, then you must find the
22 defendant not guilty of this charge.

23 Count 12 of the indictment charges Corey Bailey
24 with violating federal law by using and carrying a firearm
25 during and in relation to a crime of violence, or aiding

1 and abetting this offense involving the alleged attempted
2 murders of -- on July 14, 2014. For you to find a
3 defendant guilty of this crime, you must find that the
4 government has proved each and every one of the following
5 elements beyond a reasonable doubt:

6 First, the defendant committed any one of the
7 crimes of violence charged in Counts 6, 7 or 8, namely
8 attempted murder in the aid of racketeering.

9 Second, that the defendant knowingly used or
10 carried a firearm.

11 Third, that the use or carrying of the firearm was
12 during and in relation to any of the crimes of violence
13 charged in Counts 6, 7 or 8, attempted murder in aid of
14 racketeering.

15 And fourth, that the firearm was discharged.

16 So I've previously instructed you regarding some
17 of the other terms contained above, such as, use,
18 carrying, firearm, during and in relation to, and
19 knowingly. Those instructions all apply here as well.

20 If you are convinced that the government has
21 proved all of these elements, say so by returning a guilty
22 verdict on this charge. If you have a reasonable doubt
23 about any of these elements, then you must find the
24 defendant not guilty of this charge.

25 I am going to address attempted murder in aid of

1 racketeering as set forth in Count 13, and use of a
2 firearm in furtherance of a crime of violence as set forth
3 in crime -- in Count 15. Both charges are addressed to
4 Mr. Keithon Porter.

5 Count 13 of the indictment charges the defendant
6 Keithon Porter with violating federal law by committing,
7 or aiding and abetting in the commission of attempted
8 murder in aid of racketeering involving the alleged
9 attempted murder of Raphael Carter on May 1, 2015.

10 In order to find the defendant guilty of this
11 crime, you must be convinced that the government has
12 proved each of the following elements beyond a reasonable
13 doubt:

14 One, that the Seven Mile Bloods enterprise existed
15 as alleged in the indictment.

16 Two, that the enterprise was engaged in interstate
17 commerce or its activities affected interstate commerce.

18 Three, that the enterprise was engaged in
19 racketeering activity.

20 Four, that defendant committed or aided and
21 abetted in the commission of the attempted murder of
22 Raphael Carter. I previously provided you with the
23 elements of attempted murder, also known as assault with
24 intent to murder, which you can see in Count 6.

25 Five, the defendant's purpose in committing the

1 attempted murder was to maintain or increase his position
2 in the enterprise. It is not necessary for the government
3 to prove that this was the defendant's sole purpose in
4 committing the attempted murder. You need only find that
5 it was an animating purpose. For purposes of this
6 element, it is sufficient that the defendant committed the
7 alleged attempted murder in furtherance of his membership
8 in the enterprise, or because he knew that it was expected
9 of him by reason of that membership.

10 I have previously instructed you regarding some of
11 the terms contained above, such as, enterprise, engaged in
12 interstate commerce, racketeering activity, and those
13 instructions apply here as well.

14 If you are convinced that the government has
15 proved all of these elements for this charge, say so by
16 returning a guilty verdict on this charge. If you have
17 reasonable doubts about any of the these elements, then
18 you must find the defendant not guilty of this charge.

19 Count 15 of the indictment charges Keithon Porter
20 with violating federal law by using and carrying a firearm
21 during and in relation to a crime of violence, or aiding
22 and abetting this offense involving the alleged attempted
23 murder of Raphael Carter on May 1, 2014.

24 For you to find a defendant guilty of this crime,
25 you must find that the government proved each and every

1 element beyond a reasonable doubt:

2 First, that the defendant Keithon Porter committed
3 the crime of violence charged in Count 13, namely
4 attempted murder in aid of racketeering.

5 Second, that the defendant knowingly used or
6 carried a firearm.

7 Third, that the use or carrying of a firearm was
8 during and in relation to a crime of violence charged in
9 Count 13, which is in this case attempted murder in aid of
10 racketeering.

11 And fourth, that the firearm was discharged.

12 I have previously instructed you regarding some of
13 the terms contained above, such as, use, carrying,
14 firearm, during and in relation to, and knowingly. These
15 instructions apply here as well.

16 If you are convinced that the government has
17 proved all of these elements, say so by returning a guilty
18 verdict on this charge. If you have a reasonable doubt
19 about any of these elements, you must find the defendant
20 not guilty of this charge.

21 Next, we're addressing a charge of murder and
22 attempted murder in aid of racketeering set forth in
23 Counts 16, 18, 19 and 20, and use of a firearm in
24 furtherance of crimes of violence as in Counts 17 and 24
25 as directed to Arlandis Shy and Keithon Porter.

1 Count 16 of the indictment charges the defendants
2 Arlandis Shy and Keithon Porter with violating federal law
3 by committing, or aiding and abetting in the commission of
4 murder in aid of racketeering involving the alleged murder
5 of Dvante Roberts on May 8, 2015.

6 In order to find the defendants guilty of this
7 crime, you must find that the government has proved each
8 of the following elements beyond a reasonable doubt:

9 One, that the Seven Mile Bloods enterprise existed
10 as alleged in the indictment.

11 Two, that the enterprise was engaged in interstate
12 commerce or its activities affected interstate commerce.

13 Three, that the enterprise was engaged in
14 racketeering activity.

15 And four, that the defendant committed, or aided
16 and abetted in the commission of first degree murder of
17 Dvante Roberts. I've previously provided you with the
18 elements of first degree murder as set forth in Count 2.

19 Five, the defendant's purpose in committing the
20 murder was to maintain his -- or improve his position in
21 the enterprise. It's not necessary for the government to
22 prove that this was the defendant's sole purpose in
23 committing the murder. You need only find that it was an
24 animating purpose, and for purposes of this element, it is
25 sufficient if the defendant committed the alleged murder

1 in furtherance of his membership in the enterprise, or
2 because he knew that it was expected of him by reason of
3 that membership.

4 I now give you more detailed instructions.

5 The previous explanations and definitions that I
6 provided you pertaining to first degree murder apply here
7 as well.

8 Also, I have previously instructed you regarding
9 some of the terms contained above, such as, enterprise,
10 engaged in interstate commerce, and racketeering activity.
11 Those instructions apply here as well.

12 If you are convinced that the government has
13 proved all of these elements for this charge, say so by
14 returning a guilty verdict on this charge. If you have
15 reasonable doubts about any of these elements, then you
16 must find the defendant not guilty of this charge.

17 Count 17 of the indictment charges Arlandis Shy
18 and Keithon Porter with the use of a firearm in
19 furtherance of a crime of violence causing death, or
20 aiding and abetting this offense involving the alleged
21 murder of Dvante Roberts on May 8, 2015.

22 In order to find the defendant guilty of this
23 charge, you must be convinced that the government has
24 proved each of the following elements beyond a reasonable
25 doubt:

1 One, that the defendant committed the crime of
2 violence alleged in Count 1 -- I'm sorry -- in Count 16
3 namely, murder in aid of racketeering.

4 Two, the defendant used -- knowingly used or
5 carried a firearm.

6 Three, the use or carrying of the firearm was
7 during and in relation to the crime of violence.

8 Four, in the course of committing the crime of
9 violence, the defendant caused the death of another
10 person, Dvante Roberts, through the use of the firearm.

11 And five, that the death was an unlawful killing
12 of a human being with malice aforethought.

13 I have previously instructed you regarding some of
14 the terms contained above, such as, use, carrying,
15 firearm, during and in relation to, knowingly, and malice
16 aforethought.

17 If you are convinced that the government has
18 proved all of these elements for this charge, say so by
19 returning a guilty verdict on this charge. If you have
20 reasonable doubt any of these elements, then you must find
21 the defendant not guilty of this charge.

22 Count 18 of the indictment charges defendants
23 Arlandis Shy and Keithon Porter with violating federal law
24 by committing, or aiding and abetting in the commission of
25 attempted murder in aid of racketeering involving the

1 alleged attempted murder of Marquis Wicker on May 8, 2015.

2 To find the defendant guilty of this charge, you
3 must be convinced that the government has proved each of
4 the following elements beyond a reasonable doubt:

5 One, that the Seven Mile Bloods enterprise existed
6 as alleged in the indictment.

7 Two, that the enterprise was engaged in interstate
8 commerce or its activities affected interstate commerce.

9 Three, that the enterprise was engaged in
10 racketeering activity.

11 And four, that the defendant committed or aided
12 and abetted in the commission of the attempted murder of
13 Marquis Wicker. I previously provided you with the
14 elements of attempted murder, which is also known as
15 assault with intent to murder as set forth in Count 6.

16 Five, the defendant's purpose in committing the
17 attempted murder was to maintain or increase his position
18 in the enterprise. It's not necessary for the government
19 to prove that this was the defendant's sole purpose in
20 committing the attempted murder. You need only find that
21 it was an animating purpose. For purposes of this
22 element, it is sufficient if the defendant committed the
23 alleged attempted murder in furtherance of his membership
24 in the enterprise, or because he knew that it was expected
25 of him by reason of that membership.

1 I've previously instructed you regarding some of
2 the terms contained above, such as, enterprise, engaged in
3 interstate commerce, and racketeering activity. Those
4 instructions apply here as well.

5 If you are convinced that the government has
6 provided -- has proved all of these elements for this
7 charge, say so by returning a guilty verdict on this
8 charge. If you have a reasonable doubt about any of these
9 elements, then you must find the defendant not guilty of
10 this charge.

11 Count 19 of the indictment charges the defendants
12 Arlandis Shy and Keithon Porter with violating federal law
13 by committing, or aiding and abetting in the commission of
14 attempted murder in aid of racketeering involving the
15 alleged murder of Darrio Roberts on May 8, 2015.

16 In order to find the defendant guilty of this
17 crime, you must be convinced that the government has
18 proved each of the following elements beyond a reasonable
19 doubt:

20 One, the Seven Mile Bloods enterprise existed as
21 alleged in the indictment.

22 Two, the enterprise was engaged in interstate
23 commerce or its activities affected interstate commerce.

24 Three, that the enterprise was engaged in
25 racketeering activity.

1 Four, that the defendant committed or aided and
2 abetted in the commission of the attempted murder of
3 Darrio Roberts.

4 I've previously provided you with the elements of
5 attempted murder, also known as assault with intent to
6 murder as set forth in Count 6.

7 For the defendant's purpose -- I'm sorry.

8 Number five, the defendant's purpose in committing
9 the alleged murder -- or attempted murder was to maintain
10 or increase his position in the enterprise. It's not
11 necessary for the government to prove that this was the
12 defendant's sole purpose in committing the attempted
13 murder. You need only find that it was an animating
14 purpose. For purposes of this element, it is sufficient
15 if the defendant committed the alleged attempted murder in
16 furtherance of his enterprise, or because he knew it was
17 expected of him by reason of that membership.

18 I've previously instructed you regarding some of
19 the terms contained above, like enterprise, engaged in
20 interstate commerce and racketeering activity. Those
21 instruction apply here as well.

22 If you are convinced that the government has
23 proved all of these elements for this charge, say so by
24 returning a guilty verdict on this charge. If you have
25 reasonable doubts about any of these elements, then you

1 must find the defendant not guilty of this charge.

2 Why don't we take another short break.

3
4 (Recess taken at 11:21 a.m.)

5
6 (Proceedings held with jury at 11:35 a.m.)

7
8 **THE COURT:** Okay. You can take a seat.

9 So Page 93.

10 Count 20 of the indictment charges defendants
11 Arlandis Shy and Keithon Porter with violating federal law
12 by committing, or aiding and abetting in commission of
13 attempted murder in aid of racketeering involving the
14 alleged attempted murder of Jesse Ritchie on May 8, 2015.

15 In order to find the defendant guilty of this
16 crime, you must be convinced that the government proved
17 each of the following elements beyond a reasonable doubt:

18 One, the Seven Mile Bloods enterprise existed as
19 alleged in the indictment.

20 Two, that the enterprise was engaged in interstate
21 commerce or its activities affected interstate commerce.

22 Three, that the enterprise was engaged in
23 racketeering activity.

24 Four, that the defendant committed, or aided and
25 abetted in the commission of the attempted murder of Jesse

1 Ritchie. I previously provided you with the elements of
2 attempted murder, also known as assault with intent to
3 murder as set forth in Count 6.

4 Five, the defendant's purpose in committing the
5 attempted murder was to maintain or increase his position
6 in the enterprise. It's not necessary for the government
7 to prove that this was the defendant's sole purpose in
8 committing the attempted murder. You need only find that
9 it was an animating purpose. For purposes of this
10 element, it is sufficient if the defendant committed the
11 alleged attempted murder in furtherance of his membership
12 in the enterprise, or because he knew that it was expected
13 of him by reason of that membership.

14 I've previously instructed you concerning some of
15 the terms contained above, such as, enterprise, engaged in
16 interstate commerce, and racketeering activity. Those
17 instructions apply here as well.

18 If you are convinced that the government has
19 proved all of these elements for this charge, say so by
20 returning a verdict of guilty of this charge. If you have
21 a reasonable doubt about any of these elements, then you
22 must find the defendant not guilty of this charge.

23 Count 24 of the indictment charges Arlandis Shy
24 and Keithon Porter with violating federal law by using and
25 carrying a firearm during and in relation to a crime of

1 violence, or aiding and abetting this offense, involving
2 the alleged attempted murders on May 8, 2015.

3 For you to find the defendant guilty of this
4 crime, you must find that the government has proved each
5 and every one of the following elements beyond a
6 reasonable doubt:

7 First, the defendant committed any of the crimes
8 of violence charged in Counts 18, 19 or 20, namely
9 attempted murder in aid of racketeering.

10 Second, the defendant knowingly used or carried a
11 firearm.

12 Third, the use and carrying of a firearm was
13 during and in relation to the crime of violence charged in
14 any of the charges of Counts 18, 19, 20 constituting
15 attempted murder in aid of racketeering.

16 Fourth, that the firearm was discharged.

17 I've previously instructed you on some terms
18 contained above, like use, carrying, firearm, during and
19 in relation to, and knowingly, and those apply here as
20 well.

21 If you are convinced that the government has
22 proved all of these elements, say so by returning a guilty
23 verdict on this charge. If you have reasonable doubt
24 about any of these elements, you must find the defendant
25 not guilty of this charge.

1 Next, I'm going to address attempted murder in aid
2 of racketeering charged in Count 25, and use of a firearm
3 in furtherance of a crime of violence as charged in Count
4 27 as against defendant Eugene Fisher and Robert Brown,
5 II.

6 Count 25 of the indictment charges the defendant
7 Eugene Fisher and Robert Brown with violating federal law
8 by committing, or aiding and abetting the commission of
9 attempted murder in aid of racketeering involving the
10 alleged attempted murder of Derrick Peterson, Darnell
11 Canady and Jason Gaskin on May 10, 2015.

12 In order to find a particular defendant guilty of
13 this crime, you must be convinced that the government has
14 proved each of the following elements beyond a reasonable
15 doubt:

16 One, the Seven Mile Bloods enterprise existed as
17 alleged in the indictment.

18 Two, that the enterprise was engaged in interstate
19 commerce or its activities that affected interstate
20 commerce.

21 Three, that the enterprise was engaged in
22 racketeering activity.

23 Four, that the defendant committed, or aided and
24 abetted in the commission of the attempted murder of
25 Derrick Peterson, Darnell Canady or Jason Gaskin.

1 I've previously provided you with elements of the
2 attempted murder, also known as assault with intent to
3 murder as set forth in Count 6.

4 Five, that the defendant's purpose in committing
5 the attempted murder was to maintain or increase his
6 position in the enterprise. It's not necessary for the
7 government to prove that this was the defendant's sole
8 purpose in committing the attempted murder. You need only
9 find that it was an animating purpose. For purposes of
10 this element, it is sufficient if the defendant committed
11 the alleged attempted murder in furtherance of his
12 membership in the enterprise, or because he knew that it
13 was expected of him by reason of that membership.

14 I have previously instructed you regarding some of
15 the terms contained above, such as, enterprise, engaged in
16 interstate commerce, and racketeering activity. Those
17 instructions apply here as well.

18 If you are convinced that the government has
19 proven all of these for this charge, say so by returning a
20 guilty verdict on this charge. If you have a reasonable
21 doubt about any of these elements, then you must find the
22 defendant not guilty of this charge.

23 Count 27 of the indictment charges Eugene Fisher
24 and Robert Brown with violating federal law by using and
25 carrying a firearm during and in relation to a crime of

1 violence, or aiding and abetting this offense, involving
2 the alleged attempted murders on January 10, 2015.

3 For you to find the defendant guilty of this
4 crime, you must find that the government has proved each
5 and every one of the following elements beyond a
6 reasonable doubt:

7 First, that the defendant committed the crime of
8 violence charged in Count 25, namely attempted murder in
9 aid of racketeering.

10 Second, the defendant knowingly used or carried a
11 firearm.

12 Third, the that use or carrying of a firearm was
13 during and in relation to the crime of violence charged in
14 Count 25 being attempted murder in aid of racketeering.

15 Fourth, that the firearm was discharged.

16 As I have previously instructed you on some of the
17 terms contained above, such as, use, carrying, firearm,
18 during and in relation to, and knowingly, and those terms
19 apply here as well.

20 If you are convinced that the government has
21 proved all of these elements, say so by returning a guilty
22 verdict on this charge. If you have reasonable doubt
23 about any of these elements, then you must find the
24 defendant not guilty of that charge.

25 This deals with the charge of felon in possession

1 of a firearm and ammunition against Eugene Fisher.

2 Count 33 of the indictment charges Eugene Fisher
3 with violating federal law by being a convicted felon in
4 possession of a firearm on or about September 26, 2015.

5 For you to find him guilty of this crime, you must
6 find that the government has prove each and every one of
7 the following elements beyond a reasonable doubt:

8 First, the defendant has been convicted of a crime
9 punishable by imprisonment for more than one year. The
10 government and the defendant have agreed that the
11 defendant has previously been convicted of a crime
12 punishable by imprisonment for more than one year.

13 Second, the defendant, following his conviction,
14 knowingly possessed a firearm.

15 Third, that the firearm crossed a state line prior
16 to the alleged possession. It is sufficient to show that
17 the firearm was manufactured in a state other than
18 Michigan. The government and the defendant have agreed
19 that the firearm crossed a state line prior to the alleged
20 possession in this case.

21 I have previously instructed you regarding some of
22 the terms contained in the above, such as, firearm,
23 knowingly and possession. Those instructions apply here
24 as well.

25 If you are convinced that the government has

1 proved all of these elements for this charge, say so by
2 returning a guilty verdict on this charge. If you
3 reasonable doubts about any of these elements, then you
4 must find the defendant not guilty of this charge.

5 Count 34 of the indictment also charged Eugene
6 Fisher with violating federal law by being a convicted
7 felon in possession of a firearm or ammunition on or about
8 November 12, 2015.

9 For you to find him guilty of this charge, you
10 must find that the government has proved each and every
11 one of the following elements beyond a reasonable doubt:

12 First, the defendant has been convicted of a crime
13 punishable by imprisonment for more than one year. The
14 government and the defendant have agreed that the
15 defendant has previously been convicted of a crime
16 punishable by imprisonment for than one year.

17 Second, that the defendant, following his
18 conviction, knowingly possessed a firearm or ammunition.

19 Third, that the firearm or ammunition crossed a
20 state line prior to the alleged possession. It is
21 sufficient to show that the firearm and ammunition were
22 manufactured in a state other than Michigan. The
23 government and the defendant have agreed that the firearm
24 and ammunition crossed a state line prior to the alleged
25 possession.

1 I have previously instructed you regarding some of
2 the terms contained above, such as, firearm, knowingly and
3 possession. These instructions apply here as well.

4 If you are convinced that the government has
5 proved all of these elements for this charge, say so by
6 returning a guilty verdict on this charge. If you have
7 reasonable doubt about any of these elements, then you
8 must find the defendant not guilty of this charge.

9 As it relates to charges of aiding and abetting,
10 murder and attempted in aid of racketeering as addressed
11 in Counts 2, 4, 6, 7, 8, 13, 16, 18, 19, 20 and 25.

12 A person may violate the law even though he does
13 not personally do each and every act constituting the
14 offense. You may find a particular defendant guilty if he
15 intentionally helped or encouraged someone else to commit
16 the crime. A person who does that is called an aider and
17 abettor.

18 For to you find a particular defendant guilty of a
19 crime as an aider and abettor, you must be convinced that
20 government has proved each and every one of the following
21 elements beyond a reasonable doubt:

22 First, that the specific crime under consideration
23 was committed.

24 Second, that the particular defendant helped to
25 commit the crime or encouraged someone else to commit the

1 crime.

2 And third, that the particular defendant intended
3 to help commit or encourage the crime.

4 Proof that a particular defendant may have known
5 about a crime, even if it was there when it was committed,
6 is not enough to find him guilty. You can consider it
7 this in deciding whether the government has proved that he
8 was an aider and abettor, but without more, it is not
9 enough.

10 What the government must prove is that the
11 particular defendant did something to help or encourage
12 the crime with the intent that the crime be committed.

13 If you are convinced that the government has
14 proved all these elements of a specific charge against a
15 particular defendant, say so by returning a guilty verdict
16 on that charge as to that defendant. If you have
17 reasonable doubt about any one of those elements of a
18 specific charge as to a particular defendant, then you
19 cannot find the defendant guilty of that crime as an aider
20 and abettor.

21 Next, the Court will address aiding and abetting,
22 possession of a firearm in furtherance of a crime of
23 violence, and use and carry of a firearm during and in
24 relation to a crime of violence as in Counts 3, 5, 12, 15,
25 17, 24, 27 and 32.

1 For to you find a defendant guilty of the charges
2 contained in Counts 3, 5, 17, 17, 24, 27 or 32, it is not
3 necessary for you to find that the particular defendant
4 personally committed that crime. You may also find him
5 guilty if he intentionally helped or encouraged someone
6 else to commit the crime. A person doing this is called
7 an aider and abettor.

8 For to you find the defendant guilty of a crime as
9 an aider and abettor, you must be convinced that the
10 government has proved each and every one of the following
11 elements beyond a reasonable doubt:

12 First, that the specific crime under consideration
13 was committed.

14 Second, that the particular defendant helped to
15 commit or encouraged someone else to commit that crime.

16 And third, that the particular defendant intended
17 to help commit or encourage that crime. A defendant
18 intended to aid or abet the firearm crime if he had
19 advance knowledge that an enterprise member or associate
20 would possess a firearm in furtherance of the conspiracy.
21 Advance knowledge means knowledge at a time when the
22 defendant can attempt to alter the plan or withdraw from
23 the enterprise. Knowledge of a firearm may, but does not
24 have to exist before the underlying crime is begun. It is
25 sufficient if the defendant gained the knowledge in the

1 midst of the underlying crime, as long as the defendant
2 chose to continue to participate in the crime and had a
3 realistic opportunity to withdraw. You may, but need not
4 infer that the defendant had sufficient foreknowledge if
5 you find that the defendant chose to continue his
6 participation in the crime after the defendant knew an
7 accomplice possessed a firearm.

8 If you are convinced that the government has
9 proved all of these elements, say so by returning a
10 verdict of guilty on this charge. If you have reasonable
11 doubt about any one of these elements, then you cannot
12 find the defendant guilty of possessing a firearm in
13 furtherance of a crime of violence as an aider and
14 abettor.

15 As I just described, the indictment accuses each
16 defendant of committing the crime charged in more than one
17 possible way. The first way is that particular defendant
18 personally committed the crime. The second way is that a
19 particular aided and abetted another person in committing
20 the crime.

21 The government does not have prove both of those
22 for you to return a verdict of guilty on a charge under
23 consideration, but to return a guilty verdict, all of
24 you -- all 12 of you must unanimously agree that the
25 particular defendant either personally committed the

1 offense or aided and abetted the offense under
2 consideration.

3 I am now going to address some evidentiary
4 instructions and your deliberations.

5 That concludes the part of my instructions
6 explaining the elements of the crimes and the defendants'
7 positions.

8 Next, I will explain some rules that you must use
9 in considering some of the testimony and evidence in the
10 case.

11 Now some of the people who may have involved in
12 these events are not on trial. This does not matter.
13 There's no requirement that all members of a conspiracy or
14 event be charged and prosecuted or tried together in one
15 proceeding. Nor is there any requirement that the names
16 of all of the other conspirators be known. An indictment
17 can charge a defendant with a conspiracy involving people
18 whose names are not known, as long as the government can
19 prove that the defendant conspired with one or more of
20 them. Whether they are named or not does not matter.

21 Each defendant has an absolute right not to
22 testify or to present evidence. The fact that a defendant
23 may not testify or present evidence cannot be considered
24 by you in any way. Do not even discuss it in your
25 deliberations.

1 Remember that it is up to the government to prove
2 a defendant guilty beyond a reasonable doubt. It is up to
3 a defendant -- it is not up to a defendant to prove that
4 he is innocent.

5 You had heard testimony of FBI Special Agent
6 Joseph Jensen and Michigan State Police Laboratory
7 Technician Rebecca Smith, both of whom testified as
8 opinioned witnesses.

9 You do not have to accept their opinions. In
10 deciding how much weight to give their opinions, you
11 should consider the witness' qualifications, and how he or
12 she reached their conclusions. Also consider other
13 factors discussed in these instructions for weighing the
14 credibility of witnesses.

15 Remember that you alone decide how much of a
16 person's testimony to believe, and how much weight you
17 think it deserves.

18 You heard the testimony of Derrick Kennedy and
19 Special Agent Vicente Ruiz, both of them testified to both
20 facts and opinions. Each of these types of testimony
21 should be given property weight.

22 As the testimony -- as to the testimony on facts,
23 consider the factors described earlier in these
24 instructions for weighing the credibility of witnesses.

25 As to the testimony on opinions, you don't have

1 accept a witness' opinion. In deciding how many weight to
2 give it, you should consider the witness' qualifications,
3 how he reached his conclusions, along with the other
4 factors discussed in these instructions for weighing the
5 credibility of witnesses.

6 Remember that you alone decide how much of a
7 witness' testimony to believe, and how much weight you
8 believe it deserves.

9 You heard testimony from various witnesses in
10 which evidence was admitted only as against a specific
11 defendant. At those times I instructed you that the
12 particular testimony was only to be considered against a
13 certain defendant.

14 In those instructions, you can only consider such
15 testimony -- in those circumstances, excuse me. You can
16 only consider such testimony as against the specific
17 defendant that I instructed you in deciding whether the
18 government has proved him guilty. You may not consider it
19 in any against any other of the defendants charged.

20 You have heard the testimony of witnesses who made
21 statements before this trial and whose prior statements
22 differed from their testimony here in court.

23 The earlier statements were brought to your
24 attention only to help you decide how believable the
25 witness' testimony was. You can't use the prior

1 statements as proof of anything else. You can only use
2 them as one way of evaluating the witness' testimony here
3 in court.

4 You heard the testimony of Matleah Scott, Anthony
5 Lovejoy and Derrick Kennedy. You have heard that the
6 government has promised not to use what that witness said
7 against her or him under a Kastigar agreement, and
8 promised them that they may receive time off of their
9 sentences in exchange for their cooperation.

10 This is permissible for the government to make
11 such promises, but you should consider their testimony
12 with more caution than the testimony of other witnesses.
13 Consider whether their testimony may have been influenced
14 by the government's promises.

15 But don't convict the defendant based on the
16 unsupported testimony of such a witness standing alone,
17 unless you believe his testimony beyond a reasonable
18 doubt.

19 You have heard the testimony of Matleah Scott,
20 Anthony Lovejoy and Derrick Kennedy who were involved in
21 the same crimes that the defendants are alleged -- are
22 charged with committing. You should consider those
23 witness' testimony with more caution than the testimony of
24 other witnesses.

25 Do not convict the defendants based on the

1 unsupported testimony of such a witness standing alone,
2 unless you believe his or her testimony beyond a
3 reasonable doubt.

4 The fact in a Matleah Scott, Anthony Lovejoy and
5 Derrick Kennedy have pleaded guilty to a crime is not
6 evidence that the defendants are guilty, and you cannot
7 consider this against the defendants in any way.

8 You have heard some video and audio recordings
9 that were received in evidence, and you were shown some
10 transcripts of those records.

11 Keep in mind that the transcripts are not
12 evidence. They were shown to you only as a guide to help
13 you follow what was being said. The recordings themselves
14 are the evidence. If you noticed any difference between
15 what you read and heard on the recordings -- excuse me.

16 If you notice any differences between what you
17 have heard on the recording and what you saw in the
18 transcripts, you must rely on what you heard, not on what
19 you read, and if you could not hear or understand certain
20 parts of the tapes, you should ignore and must ignore the
21 transcripts so far as though parts are concerned.

22 The government and the defendants have agreed or
23 stipulated to certain facts or testimony. Therefore, you
24 must accept those facts or testimony as proved.

25 That concludes the part of my instructions

1 explaining the rules for considering some of the testimony
2 and evidence. Now let me finish up by explaining some
3 things about your deliberations in the jury room and your
4 possible verdicts.

5 The first thing that you're going to do in the
6 jury room is to choose someone to act as your foreperson.
7 This person will help to guide your discussions, and will
8 speak for you here in court.

9 Once you start deliberating, do not talk to the
10 jury officers, to the court or anyone else except each
11 other about the case. If you have any questions or
12 messages, you should write them down on a piece of paper
13 and sign them, and then give them to the jury officer, who
14 forward them to me, and I'll respond as soon as possible.
15 I may have to talk to the lawyers about what you've asked,
16 or it may take me sometime to get back to you. Any
17 questions or messages normally should be sent to me
18 through your foreperson.

19 If you want to see any of the exhibits that were
20 admitted in evidence, you may send a message, and those
21 exhibits will be provided to you. You can ask for
22 exhibits individually. You can ask for groups or all of
23 the exhibits if you wish. The only exhibits that will not
24 be provided to you for examination in the jury room are
25 the drugs, ammunition and weapons received. That is not

1 to say you can't inspect those, but such inspection would
2 occur in the courtroom and not in the jury room.

3 That concludes part of my instructions explaining
4 the rules for considering some of the testimony and
5 evidence.

6 One more thing about messages. Do not ever write
7 down tell anyone, including me, how you stand on your
8 voting. For example, don't write down or tell anyone that
9 you're split 6-6 or 8-4 on a specific charge or charges or
10 whatever your vote happens to be. That should stay secret
11 until you are finished.

12 Remember that you must make your decision based
13 only on the evidence that you saw and heard in court.

14 During your deliberations, you must not
15 communicate with or provide any information to anyone by
16 means -- by any means about this case. Until I accept
17 your verdict, you may not use any electronic device or
18 media, like telephones, cell phones, smart phones,
19 iPhones, Blackberry computer, the internet, any internet
20 service, any text or instant messaging service, any
21 internet chat room, blog or website such as Facebook,
22 MySpace, LinkedIn, YouTube, Instagram, Snapchat or Twitter
23 to communicate to anyone any information about this case,
24 or to conduct any research about the case. In other
25 words, you can't talk to anybody on the phone, correspond

1 with anyone, or electronically communicate with anyone
2 about the case. You can only discuss this case in the
3 jury room with your fellow jurors during deliberations.
4 If you become aware of another juror's violation of these
5 instructions, I expect you to notify the Court.

6 You may not use these electronic means to
7 investigate or communicate about the case because it's
8 important that you decide case based only on the evidence
9 presented in this courtroom. Information on the internet
10 or available through social media might be wrong,
11 incomplete or inaccurate. You are only permitted to
12 discuss the case with your fellow jurors during
13 deliberations because they have seen and heard the same
14 evidence as you.

15 In our judicial system, it is important that
16 you're not influenced by anything or anyone outside of
17 this courtroom. Otherwise, your decision may be based on
18 information known only to you, and not to your fellow
19 jurors or other parties in the case. This would unfairly
20 and adversely impact the judicial process. A juror who
21 violates these instructions jeopardizes the fairness of
22 the proceedings, and a mistrial could result, which would
23 require the trial process to start over.

24 Your verdict as to each count, and each additional
25 question that you answer concerning Count 1, whether it is

1 guilty or not guilty must be unanimous.

2 As to each count, in order to find a particular
3 defendant guilty, every one of you must agree that the
4 government has overcome the presumption of innocence with
5 evidence that proves his guilt beyond a reasonable doubt
6 for that count. As to each count, in order to find a
7 particular defendant not guilty, each one of you must
8 agree that the government has failed to convince you
9 beyond a reasonable doubt as to that count. Either way,
10 guilty or not guilty, your verdict must be unanimous as
11 to each count.

12 Now that all evidence is in, and the arguments are
13 completed, you are free talk about the case in the jury
14 room. In fact, it is your duty to talk with each other
15 about the evidence, and to make every reasonable effort
16 you can to reach unanimous agreement. Talk to each other,
17 listen carefully and respectfully to each other's views,
18 keep an open mind as you listen to what your fellow jurors
19 have to say. Try your best to work out your differences.

20 Do not hesitate to change your mind if you are
21 convinced that other jurors are right, and that your
22 original position was wrong, but do not ever change your
23 mind just because other jurors see things differently, or
24 just to get the case over with. In the end, your vote
25 must be exactly that, your own vote. It is important for

1 you reach unanimous agreement, but only if you can do so
2 honestly and in good conscience.

3 No one will be allowed to hear your discussions in
4 the jury room, and no record will be made of what you say.
5 So you should all feel free to speak your own mind.

6 Listen carefully to what the other jurors have to
7 say, and then decide for yourself if the government has
8 prove a defendant guilty beyond a reasonable doubt.

9 If you decide that the government has proved a
10 defendant guilty, then it is my job to decide what the
11 appropriate punishment should be.

12 Deciding what the punishment is my job, not yours.
13 It would violate your oath as jurors to even consider the
14 possible punishment in deciding your verdict.

15 It is your job to look at the evidence, and decide
16 if the government has proved each defendant guilty beyond
17 a reasonable doubt.

18 So separate verdict forms have been created for
19 each defendant, and will be sent into the jury room with
20 you, which you'll use to record your verdict.

21 The form reads as follows, it varies with the
22 defendant based on what individual charges are against
23 those defendants.

24 So the verdict form essentially reads:

25 Count 1, with respect to the RICO conspiracy

1 charged in Count 1, we, the jury, unanimously find -- this
2 one I'm using as an example happens to involve Eugene
3 Fisher -- and the boxes allow you to check not guilty or
4 guilty, depending on the conclusions that you reach.

5 Again, using this example, the text goes to read:

6 With respect to Count 1, if you find Eugene Fisher
7 not guilty of RICO conspiracy, please skip to Page 3.
8 There's no need to answer the two questions listed on the
9 next page.

10 Those two questions, if your verdict is guilty on
11 Count 1 are to be answered. The questions read:

12 Did the defendant Eugene Fisher, between July 14,
13 2014 through September 26, 2015, conspire with another
14 conspirator to assault rival gang members with intent to
15 commit murder, and you have, again, two potential options
16 either no or yes.

17 The second question on that page, again the
18 question is only to be answered if you find guilty on
19 Count 1 reads as follows:

20 Did defendant Eugene Fisher commit or cause to be
21 committed, or aid and abet in the commission of the
22 attempted murder, assault with intent to murder, of
23 Derrick Peterson, Darnell Canady or Jason Gaskin on or
24 about May 10, 2015. Again two choices, no or yes.

25 If you found Mr. Fisher not guilty, you're not

1 answering those two questions, and you go straight to the
2 other counts that are charged, which ask you to make
3 findings of guilty or not guilty.

4 Again, as an example in Mr. Fisher's case, the
5 charges include Count 25, which is a charge of attempted
6 murder of Derrick Peterson, Darnell Canady or Jason
7 Gaskin.

8 In Count 27, which charges use and carry of a
9 firearm during and in relation to a crime of violence.

10 And Count 32, which charges possession of a
11 firearm in furtherance of a crime of violence.

12 Then Count 33 charges felon in possession of a
13 firearm, and Count 34, charging felon in possession of a
14 firearm or ammunition, and those again are all going to be
15 answered not guilty or guilty depending on your
16 conclusions in reviewing the case.

17 Each of these verdict forms are somewhat different
18 based on the different charges that you're dealing with.

19 If you decide that the government has proved the
20 charge against a particular defendant beyond a reasonable
21 doubt, say so by having your foreperson mark the
22 appropriate place on that form. If you decide that the
23 government has not proved the charge against him beyond a
24 reasonable doubt, say so by having your foreperson mark
25 the appropriate place on the form. Your foreperson should

1 then sign each form, date it, and notify the Court that
2 you reached a verdict.

3 Remember that the defendants are only on trial for
4 the particular crimes charged in the indictment. Your job
5 is limited to deciding whether the government has proved
6 the crimes charged.

7 Also, remember that whether anyone else should be
8 prosecuted and convicted for these crimes is not a proper
9 matter for you to consider. The possible guilt of others
10 is no defense to a criminal charge. Your job is to decide
11 if the government has proved these defendants guilty.
12 Don't let the possible guilt of others influence your
13 decision in any way.

14 Let me finish up by repeating something that I
15 said to earlier. Nothing that I've said or done during
16 trial is meant to influence your decision in any way. You
17 decide for yourselves if the government has proved the
18 defendants guilty beyond a reasonable doubt.

19 Is counsel satisfied with the instruction as read?

20 **MR. WIGOD:** Could we approach very briefly?

21 **THE COURT:** Sure.

22
23 (Sidebar conference held on the record.)

24
25 **MR. WIGOD:** There are some minor corrections

1 throughout on some -- or a handful of corrections on
2 firearm charges where introductory paragraph has some
3 incorrect language. Nothing in the elements or the title.
4 I can put that on the record afterwards, but otherwise --

5 **MR. DALY:** The verdict forms need a place for
6 the foreperson to sign and date it. That would be
7 helpful. So maybe you can tell them to leave their
8 instructions on the seats when they go in, and we can make
9 the changes how's that?

10 **THE COURT:** Okay.

11
12 (Sidebar concluded.)

13
14 **THE COURT:** There's one more instruction that
15 I need to give.

16 Remember that if you elected to take notes during
17 the trial, your notes should be use only as memory in the
18 case. You should not give your notes greater weight than
19 your independent recollection of the evidence. You should
20 rely on your own independent recollection of the evidence
21 or lack of evidence, and you should not be unduly
22 influenced by the notes of other jurors. Notes are not
23 intended -- are entitled to anymore weight than the memory
24 or impression of each juror.

25 Whether you took notes or not, each of you should

1 form and express your own opinions as to the facts in the
2 case.

3 After this case is over your notes, if any, will
4 be collected and destroyed, and no one will ever see your
5 notes.

6 All right. We're going to first excuse four of
7 you from the deliberation portion.

8 **MR. S. SCHARG:** One moment, Judge.

9 Can we confer with the government for one minute?

10 **THE COURT:** Sure.

11 **MR. WIGOD:** May we approach?

12 **THE COURT:** Sure.

13
14 (Sidebar conference held on the record.)
15

16 **MR. WIGOD:** There is some discussion among
17 the defense and government about stipulating to excusing
18 one of the jurors.

19 **THE COURT:** Okay.

20 **MR. WIGOD:** But I think we've decided to see
21 who the first three are off. So if we can have another
22 meeting possibly?

23 **MR. S. SCHARG:** Why don't we strain it out
24 now that if she's not included in the first three --

25 **MR. WIGOD:** Why don't we revisit it? I

1 talked to the other two. We can revisit it after the
2 three.

3 **THE COURT:** Okay.

4 **MR. S. SCHARG:** We all have a concern over
5 Juror Number 11, who is in the back, who has been
6 throughout trial, has been -- not only closing eyes, but
7 dozing off on a continuous basis, even today during the
8 charging of the jury.

9 **THE COURT:** That is understandable.

10 **MR. THEIS:** The only thing that I would say,
11 just because out of the consideration for the service
12 they've all put in, that if we do that, that she never --
13 or no one is informed that that was done, and that's why
14 she was eliminated.

15 **MR. S. SCHARG:** Won't it draw undue attention
16 if we come back?

17 **MR. WIGOD:** No, we have these meetings
18 routinely.

19 **MR. S. SCHARG:** Can we agree then that if
20 she's not in the first three, we will ask to approach the
21 bench?

22 **THE COURT:** Yes.

23

24 (Sidebar concluded.)

25

1 **THE COURT:** We're going to ask the clerk to
2 randomly determine three names.

3 **THE CLERK:** Seat Number 6, Seat Number 1 and
4 Seat Number 4.

5 **THE COURT:** Okay. I understand that you wish
6 to approach?

7

8 (Sidebar conference held on the record.)

9

10 **MR. WIGOD:** I think we can do a random
11 selection.

12 **MR. THEIS:** That's fine with me.

13 **MR. SPIELFOGEL:** Just pick another one at
14 random?

15 **MR. THEIS:** Yes.

16 **MR. SPIELFOGEL:** Okay. Craig doesn't feel
17 that way, and I don't feel that way either. I would
18 rather get rid of her. She slept through -- what's the
19 government's position.

20 **MR. WIGOD:** I don't have a great vantage
21 point, but I can't tell whether someone is sleeping.

22 **MR. SPIELFOGEL:** The Court had a very good
23 view.

24 **MR. WIGOD:** But that's not a reason to kick
25 someone off.

1 **MR. S. SCHARG:** That's why you have alternate
2 jurors, because if someone --

3 **MS. FINOCCHIARO:** How can you Judge one more
4 than the other?

5 **MR. S. SCHARG:** I was across. Mark was able
6 to watch the juror. I was watching her the whole time.

7 **MR. SPIELFOGEL:** I don't know if any -- your
8 Honor, when you made your observations during the course
9 of trial, did you -- did it strike you that she was
10 falling asleep?

11 **THE COURT:** I did not see her nodding.

12 **MR. S. SCHARG:** I brought it to your
13 attention before today.

14 **THE COURT:** From my observation, there are
15 people that listen with their eyes closed. I couldn't --

16 **MR. SPIELFOGEL:** I don't know.

17 **MR. S. SCHARG:** The only time that she was
18 wide awake was yesterday during Feinberg's closing
19 argument.

20 **MR. SPIELFOGEL:** That destroys all theory.
21 Your Honor, I think we just pick. We are in agreement.

22 **MR. S. SCHARG:** I defer.

23 **MR. SPIELFOGEL:** Let's just pick a fourth
24 number.

25 (Sidebar conference concluded.)

1 **THE COURT:** We have one more name to draw.

2 **THE CLERK:** Seat Number 3.

3 **THE COURT:** As well, I'm not sure if there
4 should be cheers or tears, but we'll excuse the four of
5 you, and --

6 **JUROR NO. 2:** You know we ordered lunch?

7 **THE CLERK:** Yes. You will get lunch. I
8 don't think we can have you eat lunch together. So I'll
9 talk to the four of you. I will not be able to have
10 opinions about the case discussed in our four on one
11 discussion, because there's always a possibility that if
12 some problem arises with the 12 that's forcing somebody
13 out of the deliberations, under those circumstances, we
14 would recall -- randomly recall one of you to replace a
15 juror who is force to withdraw, but we'll discuss those
16 things.

17 The Court wants to thank, of course, the four of
18 you as well and all the lawyers for your sacrifices.

19 With that, we'll have the four of you step down.
20 Do you have anything in the jury room that you need to
21 retrieve? Then perhaps Sarah can pick them up and decide
22 where we should go.

23

24 (Jurors in Seats 1, 3, 4 and 6 were discharged.)

25

1 **THE COURT:** For the rest you, we'll probably
2 be taking you up to the tenth floor space so you can at
3 least see the sun while you have your lunch, and leave
4 your binders on the seats. We have some nominal changes
5 that we will making, and then we will give them back to
6 you.

7 With that, you can head back to the jury room.

8
9 (Jurors excused.)

10
11 **THE COURT:** All right. We're going to have
12 the court officers sworn, if you would raise your right
13 hand?

14
15 (Courts officers sworn in by deputy clerk.)

16
17 **THE COURT:** Thank you. So a couple of things
18 that we want to note for the record.

19 Mr. Wigod you have something first?

20 **MR. WIGOD:** Just real quick, I noticed as the
21 Court was reading, a handful of situations where there was
22 a misstatement of the description of the crime. The title
23 and elements were correct throughout, but there were a
24 handful of times where the description of the crime as it
25 relates to the firearm charges in the introductory

1 paragraph referenced in furtherance of a crime of
2 violence, rather than, during and in relation to a crime
3 of violence, and I will work with your staff in correcting
4 that. It doesn't relate to any of the elements
5 throughout, but there needs to be some corrections.

6 **THE COURT:** Okay. That was discussed and
7 agreed upon by everyone.

8 **MR. WIGOD:** I've discussed it with Mr. Daly.

9 **MR. DALY:** We agree.

10 **THE COURT:** I didn't ask counsel if you all
11 agree and are satisfied with the instructions as written
12 now in total?

13 **MR. DALY:** Other than the objections that we
14 placed previously on record, yes.

15 **THE COURT:** Okay.

16 **MR. THEIS:** Yes.

17 **MR. FEINBERG:** Yes.

18 **MR. WIGOD:** Yes, your Honor.

19 **THE COURT:** And so what else?

20 **MR. S. SCHARG:** One question, when did you
21 want the Rule 29 filed by?

22 **THE COURT:** Well, I can address them orally.

23 **MR. S. SCHARG:** I'm not prepared to do it
24 now.

25 **MR. SPIELFOGEL:** A couple have been filed.

1 We will file ours today. We can argue them wherever you
2 would like.

3 **THE COURT:** All right. So the likelihood, if
4 we're getting questions from the jury, it will be over the
5 first couple of days. So if we're able to maybe hear the
6 arguments, whether you file a written motion or you simply
7 address it orally for court to consider, is fine with me
8 either way, and maybe if we have you all coming in
9 tomorrow.

10 **MR. S. SCHARG:** Can we do it on Monday?

11 **MR. SPIELFOGEL:** Monday would be good.

12 **THE COURT:** Okay. I think we can do that.

13 Okay. Plan on Monday morning.

14 **MR. SPIELFOGEL:** Thank you, Judge.

15 **THE COURT:** 9:00 good?

16 **MR. SPIELFOGEL:** I'm coming back Sunday
17 night.

18 **THE COURT:** We have one item that defense
19 counsel will have to look at. Defense Exhibit 27, we
20 don't have marked as received into evidence. Mr. Anton
21 thinks it was, and I don't have any -- we don't have the
22 transcript handy.

23 If not, would the government be opposed to
24 receiving it?

25 **MR. WIGOD:** We need to know --

1 **THE COURT:** Unredacted text Arnold to Whitney
2 Miller, 9-25-15, Government Exhibit 28.

3 **MR. WECHSLER:** Judge, we have no objection.

4 **THE CLERK:** So that corresponds with the
5 Government Exhibit 28?

6 **MR. S. SCHARG:** Yes.

7 **THE COURT:** In agreement?

8 **MS. FINOCCHIARO:** We're in agreement.

9 **THE COURT:** Very fine.

10 **MR. WECHSLER:** Is it possible to do it Monday
11 afternoon instead of Monday morning?

12 **THE COURT:** Sure. Okay.

13
14 (Recess taken at 12:35 p.m.)

15
16 (Proceedings adjourned for the day at 1:30 p.m.)

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15-20652; USA v. EUGENE FISHER, ET AL

C E R T I F I C A T I O N

I, Ronald A. DiBartolomeo, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/Ronald A. DiBartolomeo
Ronald A. DiBartolomeo, CSR
Official Court Reporter

Date

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